

DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLES 22 to 24

**Criminal Offenses and Penalties
(Chapters 33 to End)**

Criminal Procedure

Prisoners and Their Treatment



**40th ANNIVERSARY
of
HOME RULE**



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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 12

Title 22

Criminal Offenses and Penalties

Chapters 33 to End

to

Title 24

Prisoners and Their Treatment



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4634410

ISBN 978-0-7698-6586-7 (Volume 12)

ISBN 978-0-7698-6495-2 (Set)

**Matthew Bender & Company, Inc.
701 East Water Street, Charlottesville, VA 22902
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John Hoellen, *Legislative Counsel*

Benjamin F. Bryant, Jr., *Codification Counsel*

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*

Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 12 replaces any existing Volume 12 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

We actively solicit your comments and suggestions. If you have questions or comments about the statutes, or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll free at 1-800-643-1280; E-mail us at customersupport@bender.com; or visit our website at <http://www.lexisnexis.com>. By providing us with your informed comments, you will be assured of having a working tool which increases in value each year.

LEXISNEXIS

June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

Linda W. Cropp

Chairman

Council of the District of Columbia

_____/s/_____

Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

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22. Criminal Offenses and Penalties.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

*Title has been enacted as law.

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*Title has been enacted as law.

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SUBTITLE I. CRIMINAL OFFENSES.

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§ 22-3301. Forcible entry and detainer.

Whoever shall forcibly enter upon any premises, or, having entered without force, shall unlawfully detain the same by force against any person previously in the peaceable possession of the same and claiming right thereto, shall be punished by imprisonment for not more than 1 year or a fine of not more than \$100, or both.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 851.)

Prior Codifications. — 1981 Ed., § 22-3101. 1973 Ed., § 22-3101.

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ANALYSIS

Indictment and information.
 Instructions.
 Nature and elements of offenses.
 Weight and sufficiency of evidence.

Indictment and information.

Whether unlawful entry is lesser included offense with respect to any particular crime that is charged depends not solely upon comparison of statutory requirements for respective crimes but also upon analysis of facts of offense as charged in each indictment and as proved at trial. D.C. Code §§ 22-502, 22-1801(a, b), 22-2901, 22-3101, 22-3202. *United States v. Kearney*, 498 F.2d 61, 1974 U.S. App. LEXIS 8584 (C.A.D.C. 1974).

Instructions.

District court in housebreaking prosecution did not err in refusing instruction on lesser offenses, where request was not made until conclusion of charge and did not specify any particular offenses or show their inclusion within offense charged. Fed.Rules Crim.Proc. rules 30, 31(c), 18 U.S.C.; D.C. Code 1961, §§ 22-1801, 22-3101, 22-3102. *Britton v. U.S.*,

301 F.2d 531, 1962 U.S. App. LEXIS 5470 (C.A.D.C. 1962).

Nature and elements of offenses.

While burglary does not include element of breaking or force, offense of forcible entry does. D.C. Code § 22-3101. *United States v. Melton*, 491 F.2d 45, 1973 U.S. App. LEXIS 7763 (C.A.D.C. 1973).

Statutory remedy is, as a rule, merely cumulative and does not abolish existing common-law remedy unless so declared in express terms or by necessary implication. D.C. Code §§ 16-1501, 22-3101, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

Weight and sufficiency of evidence.

Evidence was insufficient to sustain defendant's conviction for unlawful entry, namely violating order barring him from apartment complex; barred individual was not precluded from coming to premises for legitimate reason, such as visiting tenant, and prosecution presented no evidence as to whether persons with whom defendant was associating were residents of complex and, if so, whether he was their guest. D.C. Code 1981, § 22-3102. *Bean v. United States*, 709 A.2d 85, 1998 D.C. App. LEXIS 62 (1998).

§ 22-3302. Unlawful entry on property.

(a)(1) Any person who, without lawful authority, shall enter, or attempt to enter, any private dwelling, building, or other property, or part of such dwelling, building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than \$1,000, imprisonment for not more than 180 days, or both. The presence of a person in any private dwelling, building, or other property that is otherwise vacant and boarded-up or otherwise secured in a manner that conveys that it is vacant and not to be entered, or displays a no trespassing sign, shall be prima facie evidence that any person found in such property has entered against the will of the person in legal possession of the property.

(2) For the purposes of this subsection, the term "private dwelling" includes a privately owned house, apartment, condominium, or any building used as living quarters, or cooperative or public housing, as defined in section 3(1) of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 654; 42 U.S.C. § 1437a(b)), the development or administration of which is assisted by the Department of Housing and Urban Development, or housing that is owned, operated, or financially assisted by the District of Columbia Housing Authority.

(b) Any person who, without lawful authority, shall enter, or attempt to enter, any public building, or other property, or part of such building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof or his or her agent, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof or his or her agent, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than \$1,000, imprisonment for not more than 6 months, or both.

(Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 824; Mar. 4, 1935, 49 Stat. 37, ch. 23; July 17, 1952, 66 Stat. 766, ch. 941, § 1; Apr. 24, 2007, D.C. Law 16-306, § 219, 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 215, 56 DCR 7413.)

Cross references. — Burglary, see § 22-801.

Public lands, trespass, damage to, and removal of property, federal crimes and offenses, see 18 U.S.C. § 1851 et seq.

Section references. — This section is referred to in § 23-581.

Prior Codifications. — 1981 Ed., § 22-3102.

1973 Ed., § 22-3102.

Effect of amendments. — D.C. Law 16-306 inserted: “The presence of a person in any private dwelling, building, or other property that is otherwise vacant and boarded-up or otherwise secured in a manner that conveys that it is vacant and not to be entered, or displays a no trespassing sign, shall be prima facie evidence that any person found in such property has entered against the will of the person in legal possession of the property.”

D.C. Law 18-88 rewrote the section, which had read as follows: “Any person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building, or other property, or part of such dwelling, building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$100 or imprisonment in the Jail for not more than 6 months, or both, in the discretion of the court. The presence of a person in any private dwelling, building, or other property that is otherwise vacant and boarded-up or otherwise secured in a manner that conveys that it is vacant and not to be entered, or displays a no trespassing sign, shall be prima facie evidence that any person found in such property has entered against the will of the person in legal possession of the property.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 7(a) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, October 25, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 219 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 219 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 219 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 219 of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

For temporary (90 day) amendment of section, see § 215 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 215 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 16-306. — Law 16-306, the “Omnibus Public Safety Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

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 Presumptions and burden of proof.
 Questions of law and fact.
 Review.
 Right to and conduct of counsel.
 Right to trial by jury.
 Searches and seizures.
 Sentence and punishment.
 Summary judgment.
 Unlawful assembly.
 Validity.
 Verdict.
 Weight and sufficiency of evidence.

Admissibility of evidence.

Error in admitting property manager's hearsay testimony that maintenance staff had told her they had not let defendant enter apartment was harmless, in bench trial for unlawful entry, even if trial court credited and incorporated hearsay into her findings; government did not refer to hearsay evidence in its closing argument or in rebuttal, trial court did not rely on hearsay in rendering verdict, and trial court found that defendant's explanation for entering

in apartment, i.e., that property manager's "super" had let her in, was not credible. *Kozlovska v. United States*, 30 A.3d 799, 2011 D.C. App. LEXIS 619 (2011).

Jury could find that university had expressly warned intruders away from its property by prominently posting sign directing persons seeking entry to residence hall to present identification card to security guard posted at entrance, and jury could discredit expert testimony of hired investigator that it was possible to enter hall without noticing the sign. *D.C. Code* 1981, § 22-3102. *Artisist v. United States*, 554 A.2d 327, 1989 D.C. App. LEXIS 24 (1989).

Evidence in burglary and unlawful entry prosecution of defendant's prior arrest for another unlawful entry was "minimally in the nature of a criminal offense," and thus constituted inadmissible other crimes evidence, where reasonable juror could have readily concluded that defendant's prior activities amounted to crime of unlawful entry. *Williams v. United States*, 549 A.2d 328, 1988 D.C. App. LEXIS 191 (1988).

Evidence regarding defendant's subsequent arrest for unlawful entry at a university dormitory was not admissible in prosecution for burglary and unlawful entry to explain immediate circumstances surrounding offenses charged, even though subsequent arrest occurred in same dormitory as earlier incidents for which defendant was on trial, where arrest was not "nearly contemporaneous" or closely related in time to any of charged offenses. *Williams v. United States*, 549 A.2d 328, 1988 D.C. App. LEXIS 191 (1988).

Defendant's subsequent arrest for unlawful entry of dormitory room was not admissible for purpose of showing specific intent to steal on three prior occasions from dormitory rooms, as intent to steal is not prerequisite for crime of unlawful entry. *Williams v. United States*, 549 A.2d 328, 1988 D.C. App. LEXIS 191 (1988).

Prosecuting witness' testimony, in prosecution for unlawful entry, that she had had conversation with defendant as to whether or not he was entitled to go into her apartment on occasion when he had come in and beaten her up was admissible in that such testimony, along with her direct testimony that she had not given defendant permission to enter premises, bore directly upon defendant's lack of lawful authority to enter witness' apartment. *D.C. Code* § 22-3102. *Dent v. United States*, 271 A.2d 699, 1970 D.C. App. LEXIS 369 (App. 1970).

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of *Miranda v. State of Arizona*. D.C. Code §§ 22-3102, 22-3601; D.C. Code 1961, §§ 33-402, 33-416a (b)(1)(B). *Keith v. United States*, 232 A.2d 92, 1967 D.C. App. LEXIS 181 (App. 1967).

Where items allegedly stolen from complaining witness were plainly visible from hallway through open door of defendant's apartment, and complaining witness gathered up articles claimed and handed them to arresting officer, who had remained in hallway, complaining witness acted as arm of police in reducing articles to possession, and inasmuch as officer did not have a search warrant, search and seizure were unlawful evidence, obtained by complaining witness was inadmissible in prosecution of defendant and, even though case was tried by court without jury, defendant was entitled to a new trial. U.S. Const. Amend. 4; D.C. Code 1951, §§ 22-2202, 22-3102. *Moody v. U.S.*, 163 A.2d 337, 1960 D.C. App. LEXIS 234 (Cr.App. 1960).

In prosecution for unlawfully entering a private dwelling against will and without consent or authority of lawful occupant, issues as to whether complaining party occupied apartment under an alias or occupied it for purpose of having adulterous relations with another had no bearing on question of whether she was a lawful occupant. D.C. Code 1951, §§ 11-776(b), 22-3102. *Moore v. U.S.*, 136 A.2d 868, 1957 D.C. App. LEXIS 323 (Cr.App. 1957).

Arrest.

Where demonstrators who were meeting on Capitol steps had been given permission by Speaker of the House of Representatives on the condition that permission would be terminated if the group became disorderly and was ordered to leave, and where police had led demonstrators to believe that they could be present on the Capitol steps, the demonstrators could not be constitutionally arrested unless the arresting officers had reason to believe that the demonstrators were disorderly or had a purpose to interfere with lawful visitors to the Capitol, unless orders to disperse had been given and heard, and unless reasonable opportunity had been given to leave. D.C. Code §§ 9-124, 22-3102. *Dellums v. Powell*, 566 F.2d 167, 1977 U.S. App. LEXIS 12165 (C.A.D.C. 1977).

Warrantless arrest of defendant, resulting in discovery of heroin upon his person, was justified by fact of defendant's unlawful entry, committed in presence of the arresting officers, in fifth floor of a vacant building being used as a narcotics pad; moreover, considering all the circumstances, the police had reasonable grounds to believe that narcotics laws were

being violated and for that reason to arrest the defendant. D.C. Code §§ 4-140, 22-3102; U.S. Const. Amend. 4. *United States v. Williams*, 442 F.2d 738, 1970 U.S. App. LEXIS 6030 (C.A.D.C. 1970).

Arresting officer was not entitled to qualified immunity in protestors' §§ 1983 action alleging their arrests for unlawful entry of a parking garage violated First and Fourth Amendments and District of Columbia common law; although officer relied on other officers' probable cause determinations to make arrests, officer was aware at time of arrests that protestors had keycard granting them access to parking garage, and she acknowledged that she carried out arrests not because she had a reasonable belief that probable cause existed, but because she believed she had no other choice. *Bolger v. District of Columbia*, 608 F.Supp.2d 10, 2009 U.S. Dist. LEXIS 49777 (2009).

Arresting officers were entitled to qualified immunity and common-law privilege under District of Columbia law in protestors' §§ 1983 action alleging their arrests for unlawful entry of a parking garage violated First and Fourth Amendments and D.C. common law, although officers lacked firsthand knowledge of facts allegedly supporting probable cause to arrest; officers reasonably relied on other officers' probable cause determinations, and did not possess information at time of arrests that would have tended to undermine existence of probable cause. *Bolger v. District of Columbia*, 608 F.Supp.2d 10, 2009 U.S. Dist. LEXIS 49777 (2009).

Police officers working as private security guards for restaurant had probable cause to arrest customer for unlawful entry after customer refused to comply with officers' order to leave, and, thus, neither government nor officers were liable on theory of false arrest or false imprisonment; officers ordered customer to leave restaurant, they were authorized to do so by restaurant, and customer refused to leave when ordered to do so by officers. *Kotsch v. District of Columbia*, 924 A.2d 1040, 2007 D.C. App. LEXIS 267 (2007).

Off-duty police officer acting as security guard for restaurant arrested customer pursuant to authority as officer, not as restaurant's agent or employee, and, thus, restaurant owner could not be liable on theory of false arrest or assault and battery since officer was required by statute and regulation to perform the act even while off duty. D.C. Code 1981, §§ 4-142, 22-3102. *Bauldock v. Davco Food, Inc.*, 622 A.2d 28, 1993 D.C. App. LEXIS 65 (1993).

Despite contention of defendant, prosecuted for unlawful entry for having refused to leave the White House grounds when directed to do so by a person in lawful authority, that he was engaging in symbolic speech when he kneeled on tourist path, it was not unreasonable for

Secret Service officers to arrest him rather than permit him to stay on the grounds until visiting hours were over, where defendant never told the officers that he was engaged in a protest. D.C. Code 1981, § 22-3102. *Boertje v. United States*, 569 A.2d 586, 1989 D.C. App. LEXIS 219 (1989).

Where police officers observed defendant inside a vacant building, and had reason to believe that defendant did not belong there, and the property itself revealed indications of a continued claim of possession by the owner or manager, police had probable cause to arrest defendant for unlawful entry, and thus, subsequent search of defendant's person, revealing heroin, was valid as incident to a lawful arrest. D.C. Code 1981, §§ 22-3102, 33-541(d). *Culp v. United States*, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

Owners of vacant house sufficiently indicated efforts to protect the property against intruders to allow police officers to reasonably conclude that defendant knowingly entered against the will of the person lawfully in charge, for purposes of meeting criteria for unlawful entry, despite absence of a "no trespassing" sign, where owners had made continuous and diligent efforts to board up the house, and at the time defendant entered at least some of the windows were boarded over. D.C. Code 1981, § 22-3102. *Culp v. United States*, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

Owner's request that police keep a special watch over vacant property armed police with knowledge that no one had permission to enter the property, for purposes of determining whether police had probable cause to arrest person found inside the house. D.C. Code 1981, § 22-3102. *Culp v. United States*, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

When restaurant patron, in presence of police officer, refused to leave on demand of restaurant manager for her shoeless condition, officer was justified in arresting patron for violation of unlawful entry statute. D.C. Code §§ 22-3102, 47-2902. *Feldt v. Marriott Corp.*, 322 A.2d 913, 1974 D.C. App. LEXIS 250 (1974).

Where arresting officers had knowledge that no one had owner's permission to occupy particular vacant apartment, officers observed broken lock, damaged door panel and the opened door of the apartment, through which defendant and companion could be seen, officers had probable cause to believe that defendant and his companion had made unlawful entry, officers' entry into apartment without warrant to effect arrest was justified and search of the premises was valid as incident to lawful arrest. D.C. Code §§ 22-3102, 22-3601, 23-104(a)(2). *Jones v. United States*, 282 A.2d 561, 1971 D.C. App. LEXIS 211 (1971).

Police officer who observed defendant in hallway of building and, upon questioning defendant, received no logical explanation for his presence and who thereupon learned from building manager that the building was usually kept locked and the public was not invited to enter had sufficient ground to arrest defendant for unlawful entry committed in officer's presence, and after that valid arrest, the right to search defendant naturally followed. D.C. Code § 22-3102. *Best v. United States*, 237 A.2d 825, 1968 D.C. App. LEXIS 125 (App. 1968).

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory duty to arrest the offenders immediately. D.C. Code §§ 22-3102, 22-3601; D.C. Code 1961, §§ 33-402, 33-416a(b)(1)(B). *Keith v. United States*, 232 A.2d 92, 1967 D.C. App. LEXIS 181 (App. 1967).

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained as result of arrest. D.C. Code 1951, § 22-3102. *Smith v. U.S.*, 173 A.2d 739, 1961 D.C. App. LEXIS 278 (Cr.App. 1961).

Police officer who, while walking to rear of tavern more than one hour after closing time, saw a man, who had been peering from rear of tavern, suddenly pull his head back, and who then observed two men walking away rapidly, one of whom, when stopped by officer, was holding hammer between his legs, had reasonable cause to believe that the two men were engaged in a felonious act, and, therefore, their arrest was proper and admission of hammer in evidence in subsequent criminal prosecution was proper. D.C. Code 1951, § 22-3102. *McFarland v. U.S.*, 163 A.2d 627, 1960 D.C. App. LEXIS 246 (Cr.App. 1960).

Common law.

In the absence of constitutional or statutory rights, common-law rule that restaurant owner has right to arbitrarily refuse service to any guest still controls. D.C. Code §§ 22-3102, 47-2902. *Feldt v. Marriott Corp.*, 322 A.2d 913, 1974 D.C. App. LEXIS 250 (1974).

Statute proscribing unauthorized entry is not mere intent to restate common law of criminal trespass; statute punishes one who, without lawful authority, enters premises against will of lawful occupant. D.C. Code 1961, § 22-3102. *Bowman v. United States*, 212 A.2d 610, 1965 D.C. App. LEXIS 223 (App. 1965).

Constitutional rights.

— Assembly and petition of government, constitutional rights.

Antiabortion activists' illegal and tortious acts of trespassing on, blockading, impeding, or obstructing access to or egress from health care facilities that provided abortion services was not conduct that was protected by the First

Amendment right of association. U.S. Const. Amend. 1. *NOW v. Operation Rescue*, 747 F. Supp. 760, 1990 U.S. Dist. LEXIS 9487 (1990), modified by 816 F. Supp. 729, 1993 U.S. Dist. LEXIS 2972 (D.D.C. 1993).

An "additional specific factor" establishing defendant's lack of legal right to remain on the White House grounds was not required in prosecution for unlawful entry for having refused to leave when directed to do so by a person in lawful authority, where defendant never communicated at the scene that he was exercising First Amendment rights when he knelt on tourist path and, in any event, additional specific factor was provided by posted sign at visitors' entrance stating that any activity disrupting tour or impeding flow of pedestrian traffic was prohibited. D.C. Code 1981, § 22-3102; U.S. Const. Amend. 1. *Boertje v. United States*, 569 A.2d 586, 1989 D.C. App. LEXIS 219 (1989).

Defendant, convicted of unlawful entry for refusal to leave senator's office, had no First Amendment right to remain in office after being told, at direction of person lawfully in charge, to leave. U.S. Const. Amend. 1; D.C. Code 1981, § 22-3102. *Hemmati v. United States*, 564 A.2d 739, 1989 D.C. App. LEXIS 184 (1989).

Even if defendant's First Amendment rights were implicated by his arrest for unlawful entry for refusal to leave senator's office, he had no legal right to remain, in view of established policy in senator's office of referring citizens of other states to their own senators. U.S. Const. Amend. 1; D.C. Code 1981, § 22-3102. *Hemmati v. United States*, 564 A.2d 739, 1989 D.C. App. LEXIS 184 (1989).

Defendant, convicted of unlawful entry for refusal to leave senator's office, did not have unqualified First Amendment right to meet with senator in person, at a time and place of his own choosing. U.S. Const. Amend. 1; D.C. Code 1981, § 22-3102. *Hemmati v. United States*, 564 A.2d 739, 1989 D.C. App. LEXIS 184 (1989).

Unlawful entry conviction of defendant for failing to leave restaurant following request to leave by one lawfully in charge of the restaurant was not unconstitutional on ground defendant's presence in restaurant was in exercise of his First Amendment right of assembly with his friends in a public place. U.S. Const. Amend. 1; D.C. Code § 22-3102. *Drew v. United States*, 292 A.2d 164, 1972 D.C. App. LEXIS 411 (1972), writ of certiorari denied by 409 U.S. 1062, 93 S. Ct. 569, 34 L. Ed. 2d 514, 1972 U.S. LEXIS 322 (1972).

— Due process of law, constitutional rights.

Actions of United States attorney in entering nolle prosequi of informations charging the more serious offense of unlawful entry and,

thereafter, filing new informations regarding the less serious offense of disorderly conduct were not a violation of due process. D.C. Code 1961, §§ 22-1121, 22-3102. *Smith v. District of Columbia*, 219 A.2d 842, 1966 D.C. App. LEXIS 181 (App. 1966), vacated by 387 F.2d 233, 128 U.S. App. D.C. 275, 1967 U.S. App. LEXIS 5491 (1967).

— In general.

Within rule that constitutional enforcement of unlawful entry statute with the respect to public buildings requires some additional specific factor establishing a party's lack of legal right to remain, in addition to an order from the person in charge that the party leave, closing Capitol Rotunda area for security reasons arising from the presence of demonstrators could not serve to bootstrap the security concern into an independent factor justifying their arrest. U.S. Const. Amend. 1; D.C. Code 1981, § 22-3102. *Wheelock v. United States*, 552 A.2d 503, 1988 D.C. App. LEXIS 228 (1988).

First Amendment considerations did not alter evidentiary requirements in prosecution for unlawful entry arising from defendants' failure to vacate an abortion facility after a demand to leave had been made. D.C. Code 1973, § 22-3102; U.S. Const. Amend. 1. *Grogan v. United States*, 435 A.2d 1069, 1981 D.C. App. LEXIS 373 (1981).

— Use of streets and public places, constitutional rights.

Unlawful entry statute was constitutionally applied to demonstrators' conduct in Capitol Rotunda; lieutenant, using amplifier, expressly ordered demonstrators to leave after first advising them that they were in violation of building regulation prohibiting sitting or lying down, ordered them to cease and desist, and asked them to stand, which they failed to do, and demonstration statute, obstruction statute or Capitol Police General Order or any combination of them, could have established demonstrators' lack of legal right to remain. D.C. Code 1981, §§ 9-112(b)(5, 7), 22-3102; U.S. Const. Amend. 1. *Berg v. United States*, 631 A.2d 394, 1993 D.C. App. LEXIS 229 (1993).

Constitutionality of police order closing all steps and areas adjacent to the United States Capitol except for certain specified areas to address increased security concerns created by Persian Gulf crisis, would not be judged on basis of its application to individual protestor who allegedly posed no actual threat when arrested; relevant inquiry must include potential impact on state interest of application of exemption to others who would be entitled to it. U.S. Const. Amend. 1. *Abney v. United States*, 616 A.2d 856, 1992 D.C. App. LEXIS 294 (1992).

Police order restricting access to steps and areas adjacent to United States Capitol except for certain specified areas, issued to address increased security concerns created by Persian Gulf crisis, was not unconstitutional as applied to an individual protestor; city had interest in promulgating order to provide greater security for Capitol and those using it during wartime crisis and order was designed to promote that substantial governmental interest. U.S.C. Const.Amend. 1. *Abney v. United States*, 616 A.2d 856, 1992 D.C. App. LEXIS 294 (1992).

Asking alleged protestors to leave entrance to subway so that entrance gates could be closed at conclusion of business, and subsequent arrest for unlawful entry on public property after they refused to leave, did not violate alleged protestors' constitutional rights to protest against installation of gates; closing of gates was content neutral, as gates were closed every night at cessation of operations, gates had been installed to promote significant governmental interest of keeping subway systems safe for passengers, and protestors had alternative channel of communication of walking a few steps to continue their protest on sidewalk. D.C. Code 1981, § 22-3102; U.S. Const.Amend. 1. *United States v. Powell*, 563 A.2d 1086, 1989 D.C. App. LEXIS 171 (1989).

Early closing order with respect to Capitol Rotunda was not a reasonable restriction on First Amendment expression of some 50 people who were sitting in the center of the Rotunda praying for change of heart on certain legislation, despite contention that violation of regulations prohibiting sitting, obstructing passageways and demonstrating in the Capitol created a security problem and though the Capitol Police had been advised that the demonstrators intended to be arrested, where no special event had been planned for the Capitol Rotunda that day, there was no evidence the presence of the group disrupted legislating or tourism activities, group was never offered alternative to leaving the center of the Rotunda or notified that they were violating regulations, and the only reason for closing the Rotunda was to arrest the demonstrators. U.S. Const.Amend. 1; D.C. Code 1981, §§ 9-112, 9-112(b)(5, 7), 22-3102; 40 U.S.C. § 193f. *Wheelock v. United States*, 552 A.2d 503, 1988 D.C. App. LEXIS 228 (1988).

Within rule that, to protect unlawful entry statute from unconstitutional vagueness and to protect First Amendment rights, there must be some additional specific factor establishing a party's lack of legal right to remain in a public building, in addition to order to leave made by person lawfully in charge of the premises, the requirement of an independent factor is not satisfied simply by an articulable reason for restricting a person's First Amendment rights, and the independent factor must be in the

nature of posted regulations, signs or fences and barricades regulating the public's use of government property, or other reasonable restrictions. U.S. Const.Amend. 1; D.C. Code 1981, § 22-3102. *Wheelock v. United States*, 552 A.2d 503, 1988 D.C. App. LEXIS 228 (1988).

Section of traffic regulation which prohibits any sleeping or lying down on paved or improved portion of buildings and grounds of capitol area in order to insure that the movement of all vehicular and other traffic is allowed to proceed in safe and unimpeded fashion clearly implies legislative and administrative purpose sufficient to support regulation restricted to those instances where acts or conduct interfere with orderly processes of Congress, or with safety of individual legislators, staff members, visitors or tourists, and as so limited, regulation is constitutional. *Abney v. United States*, 451 A.2d 78, 1982 D.C. App. LEXIS 444 (1982).

Where defendant's presence in capitol area did not actually or potentially threaten movement of traffic on capitol grounds, so that enforcement of traffic regulation prohibiting lying or sleeping on improved section of capitol grounds as against defendant violated defendant's First Amendment freedoms, exigencies inherent in enforcement of regulation did not convert defendant's protected mode of expression into proscribed conduct; therefore application of regulation to defendant who was protesting denial of veteran's benefits was unconstitutional. U.S. Const.Amend. 1. *Abney v. United States*, 451 A.2d 78, 1982 D.C. App. LEXIS 444 (1982).

Government may regulate speech and communicative conduct on public property only in narrow and reasonably necessary manner serving significant government interests, and any regulation impinging upon such activity must be content neutral and nondiscriminatory. U.S. Const.Amend. 1; D.C. Code 1973, § 22-3102. *Smith v. United States*, 445 A.2d 961, 1982 D.C. App. LEXIS 348 (1982).

Factors to be weighed in determining reasonableness of any restrictions infringing upon free expression include nature of particular public property, weight of governmental interests involved, availability of alternative avenues of expression and extent to which regulation applicable on government premises unnecessarily interferes with First Amendment rights. U.S. Const.Amend. 1; D.C. Code 1973, § 22-3102. *Smith v. United States*, 445 A.2d 961, 1982 D.C. App. LEXIS 348 (1982).

Secret service was not required to wait until demonstration at White House became violent or boisterous before taking steps to curb it, and it was not unreasonable for secret service to limit public's access to White House solely to purpose of touring certain portions of executive

mansion, and policy of secret service to prohibit any form of demonstration within interior grounds of White House, regardless of nature of message sought to be conveyed, was not shown to be violative of the First Amendment. U.S. Const. Amend. 1; 3 U.S.C. § 202; 18 U.S.C. § 3056; D.C. Code 1973, § 22-3102. *Smith v. United States*, 445 A.2d 961, 1982 D.C. App. LEXIS 348 (1982).

Where defendant was permitted to recite his statement protesting government policy no less than ten times during period of his vigil on White House grounds and no attempt would have been made to interfere with him, after White House grounds were closed, had he chosen simply to obey order to depart and continue his protest just outside the gate, some 15 feet away, there was no infringement of protected expression sufficient to countervail government's interests in limiting defendant's activity and his First Amendment rights were not violated by arresting him for unlawful entry. D.C. Code § 22-3102; U.S. Const. Amend. 1. *Leiss v. United States*, 364 A.2d 803, 1976 D.C. App. LEXIS 366 (1976), writ of certiorari denied by 430 U.S. 970, 97 S. Ct. 1654, 52 L. Ed. 2d 362, 1977 U.S. LEXIS 1515 (1977).

Defendant's First Amendment rights were not violated when he refused to leave Capitol Building during a bomb threat evacuation so that charge of unlawful entry was proper. *United States v. Abney*, 112 WLR 1101 (Super. Ct. 1984).

Construction and application.

Metropolitan Area Transit Authority property is considered "public property," for purposes of unlawful entry statute. D.C. Code 1981, § 22-3102. *United States v. Powell*, 563 A.2d 1086, 1989 D.C. App. LEXIS 171 (1989).

Unique nature of grounds of executive mansion justifies more stringent regulation of conduct within White House complex than would be tolerated on most other government properties. U.S. Const. Amend. 1; D.C. Code 1973, § 22-3102. *Smith v. United States*, 445 A.2d 961, 1982 D.C. App. LEXIS 348 (1982).

Where particular defendant acted in concert with four other persons who were lying on patio of tour area on White House premises, lying in puddles of ashes and water, unlawful entry statute was properly invoked, in view of ample opportunity for defendants otherwise to convey their opinions. U.S. Const. Amend. 1; 3 U.S.C. § 202; 18 U.S.C. § 3056; D.C. Code 1973, § 22-3102. *Smith v. United States*, 445 A.2d 961, 1982 D.C. App. LEXIS 348 (1982).

Conviction for unlawful entry could be based on man's presence in ladies' bathroom. D.C. Code § 22-3102. *Hockaday v. United States*, 359 A.2d 146, 1976 D.C. App. LEXIS 296 (1976).

The District of Columbia unlawful entry statute applies to all public buildings, i.e., government buildings in the District of Columbia, including the White House or Executive Mansion. D.C. Code 1961, § 22-3102. *Whittlesey v. United States*, 221 A.2d 86, 1966 D.C. App. LEXIS 190 (App. 1966).

Construction with other laws.

Blockading of premises on which abortions were performed would violate District of Columbia laws proscribing trespass and public nuisance. D.C. Code 1981, § 22-3102. *NOW v. Operation Rescue*, 726 F. Supp. 300, 1989 U.S. Dist. LEXIS 13496 (1989), affirmed in part and vacated in part by, remanded in part by 37 F.3d 646, 308 U.S. App. D.C. 349, 1994 U.S. App. LEXIS 29032 (1994).

Statutory requirement that a restaurant must serve any quiet or orderly person does not prevent a restaurant from having reasonable requirements as to dress of its customers, such as a requirement that all male customers wear coats and ties or that all customers wear shoes. D.C. Code §§ 22-3102, 47-2902. *Feldt v. Marriott Corp.*, 322 A.2d 913, 1974 D.C. App. LEXIS 250 (1974).

Conduct of defendants charged with unlawful entry in refusing to quit steps of United States capitol after being ordered to do so by chief of capitol police and in reading names of Vietnam war dead in ordinary speaking voice did not come within prohibition of Capitol Grounds statute as interpreted. D.C. Code §§ 9-118 et seq., 9-124, 22-3102; 40 U.S.C. §§ 193a, 193g. *United States v. Nicholson*, 263 A.2d 56, 1970 D.C. App. LEXIS 237 (App. 1970).

The District of Columbia statute providing that provisions of several laws and regulations within District of Columbia for protection of public or private property and preservation of peace and order are extended to all public buildings and public grounds belonging to United States within District of Columbia assimilated subsequently enacted District of Columbia unlawful entry statute, if such assimilation were necessary. D.C. Code 1961, §§ 4-120, 22-3102. *Whittlesey v. United States*, 221 A.2d 86, 1966 D.C. App. LEXIS 190 (App. 1966).

Defenses, generally.

Under District of Columbia statute defining burglary as entry without breaking with intent to commit any criminal offense, consent to enter is not defense where one is shown to have entered with the requisite criminal intent. D.C. Code §§ 22-1801(a), 22-3102. *United States v. Kearney*, 498 F.2d 61, 1974 U.S. App. LEXIS 8584 (C.A.D.C. 1974).

Every person charged with unlawful entry was presumed to be "similarly situated" for purposes of selective prosecution claim arising

from prosecution's decision to prosecute rather than divert charges against political demonstrators; selection of all persons who participated in demonstration on same night on behalf of homeless at same place was fatally underinclusive. D.C. Code 1981, § 22-3102; U.S. Const.Amend. 5, 14. *Fedorov v. United States*, 600 A.2d 370, 1991 D.C. App. LEXIS 326 (1991).

Prosecutor's admission, that he had policy of not sending protest cases to pretrial diversion program, was *prima facie* showing that government selectively prosecuted political protestors charged with unlawful entry; prosecution concerned exercise of protected First Amendment rights. U.S. Const.Amend. 1, 5, 14; D.C. Code 1981, § 22-3102. *Fedorov v. United States*, 600 A.2d 370, 1991 D.C. App. LEXIS 326 (1991).

Any claim that defendant was justified under either international or divine law to remain kneeling on White House grounds would not have been a valid defense to charge of unlawful entry for refusal to leave when directed to do so by person in lawful authority even though defendant, while not saying so at the time, allegedly was protesting nuclear weapons policy. D.C. Code 1981, § 22-3102; U.S. Const.Amend. 6. *Boertje v. United States*, 569 A.2d 586, 1989 D.C. App. LEXIS 219 (1989).

It is no defense to a charge of unlawful entry that the crime was committed out of a sincere personal or political belief, however genuine, in the righteousness of one's action; *bona fide* belief in legal right to remain in area must have some reasonable basis to exonerate behavior. D.C. Code 1981, § 22-3102. *Hemmati v. United States*, 564 A.2d 739, 1989 D.C. App. LEXIS 184 (1989).

Fact that defendant and four other demonstrators who elected to stand trial faced enhanced charge, unlawful entry, while 153 other demonstrators who were arrested posted and forfeited collateral on lesser charge of unlawful assembly, did not require reversal of conviction on grounds of prosecutorial vindictiveness, where demonstrators were advised by assistant United States attorney that all who were arrested would be permitted to post and forfeit \$10 collateral on charge of unlawful assembly, but that if they did not do so, they would be charged with more serious misdemeanor of unlawful entry, police informed all of demonstrators of their exposure to prosecution under unlawful entry statute if they remained in Rotunda, and defendant was given opportunity to post and forfeit \$10 collateral for unlawful assembly, but failed to do so. D.C. Code 1981, §§ 22-1107, 22-3102. *Shiel v. United States*, 515 A.2d 405, 1986 D.C. App. LEXIS 418 (1986), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 706, 1988 U.S. LEXIS 1716, 56 U.S.L.W. 3718 (1988).

Defendants' mistaken belief that they had a right to remain in Capitol Rotunda when Capitol was closed early on day of State of Union Address was not a defense to charge of unlawful entry. U.S. Const.Amend. 1; D.C. Code 1981, § 22-3102. *Shiel v. United States*, 515 A.2d 405, 1986 D.C. App. LEXIS 418 (1986), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 706, 1988 U.S. LEXIS 1716, 56 U.S.L.W. 3718 (1988).

Defendant charged with unlawful entry based upon his refusal to leave Capitol Rotunda when it was closed early on day of State of Union Address was not entitled to necessity defense based upon his contention that his action was necessary to convince President to open up Capitol Rotunda or some other federal building to homeless on night of State of Union Address. D.C. Code 1981, § 22-3102. *Shiel v. United States*, 515 A.2d 405, 1986 D.C. App. LEXIS 418 (1986), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 706, 1988 U.S. LEXIS 1716, 56 U.S.L.W. 3718 (1988).

Defendants whose actions in entering churches and opening the doors to homeless persons to provide them with shelter for the night were designed to focus attention on the plight of the homeless and were not undertaken as a last resort after all else had been attempted in order to avoid an immediate harm were not entitled to the defense of necessity with respect to charges of unlawful entry. D.C. Code, 1973, § 22-3102. *Griffin v. United States*, 447 A.2d 776, 1982 D.C. App. LEXIS 387 (1982), writ of certiorari denied by 461 U.S. 907, 103 S. Ct. 1879, 76 L. Ed. 2d 810, 1983 U.S. LEXIS 4411, 51 U.S.L.W. 3774 (1983).

Belief that sit-in at private abortion facility was necessary to save human life did not rise to level of a "bona fide belief" defense in trespass action; also, evidence that abortion terminated life of the fetus did not support an immediate call to action in violation of the law. D.C. Code § 22-3102. *Gaetano v. United States*, 406 A.2d 1291, 1979 D.C. App. LEXIS 453 (1979).

As a defense to a trespass prosecution, the "reasonable belief" concept must be based in the pure indicia of innocence, in that there must be some evidence that, for example, the individual had no reason to know that he was trespassing on the rights of others, such as a belief that he had title to or possessed an interest in the land or that the land was publicly owned or that he was invited. D.C. Code § 22-3102. *Gaetano v. United States*, 406 A.2d 1291, 1979 D.C. App. LEXIS 453 (1979).

The "bona fide belief" defense to charge of criminal trespass was not meant to and does not exonerate individuals who believe they have a right, or even a duty, to violate the law in order to effect a moral, social or political purpose, regardless of the genuineness of the belief

or the popularity of the purpose. D.C. Code § 22-3102. *Gaetano v. United States*, 406 A.2d 1291, 1979 D.C. App. LEXIS 453 (1979).

Reasonable belief of right to enter premises and remain therein is a defense under the trespass statute. D.C. Code § 22-3102. *Gaetano v. United States*, 406 A.2d 1291, 1979 D.C. App. LEXIS 453 (1979).

Role played by District of Columbia police officer in informing hotel security personnel of defendant's criminal record prior to time hotel ordered defendant not to return was not sufficient to convert the private action of hotel in barring defendant therefrom into essentially a governmental act even assuming that an opposite conclusion would affect result in prosecution for unlawful entry. D.C. Code § 22-3102. *Kelly v. United States*, 348 A.2d 884, 1975 D.C. App. LEXIS 292 (1975).

In prosecution for unlawful entry by a private detective and photographer, employed by husband to secure evidence against his wife in a divorce proceeding, alleged right of husband to make what would otherwise be an illegal entry in order to prevent the debauchment of his wife would be personal to the husband and could not be invoked by the defendants. D.C. Code 1951, § 22-3102. *Leon v. U.S.*, 136 A.2d 588, 1957 D.C. App. LEXIS 321 (Cr.App. 1957).

Examination of witnesses.

In prosecution for unlawful entry for refusal to leave senator's office, trial court properly refused to enforce subpoena of senator; there was no showing that senator had direct knowledge of facts of case and nothing in record suggested that senator's testimony would have amplified or contradicted testimony of his employees. D.C. Code 1981, § 22-3102. *Hemmati v. United States*, 564 A.2d 739, 1989 D.C. App. LEXIS 184 (1989).

Probative value of cross-examination concerning prior arrest of defendant to test character witnesses' knowledge of information inconsistent with reputation for truthfulness outweighed prejudicial effect in prosecution for unlawful entry; conviction depended on whether jury believed defendant's testimony that he had good-faith belief in right to be on college campus despite barring notice against him; and arrest occurred during period of time that character witnesses knew defendant and took place in community from which witnesses were reporting. D.C. Code 1981, § 22-3102. *Maura v. United States*, 555 A.2d 1015, 1989 D.C. App. LEXIS 43 (1989).

In prosecution for robbery, defendant could be impeached with his prior conviction of unlawful entry; unlawful entry involved "dishonesty" akin to housebreaking. D.C. Code §§ 14-305(b)(1)(B), 22-2901, 22-3102. *Bates v. United States*, 403 A.2d 1159, 1979 D.C. App. LEXIS 419 (1979).

If one is lawfully on premises exercising First Amendment rights, and refuses to leave upon lawful demand to do so and is thereupon convicted of unlawful entry, he or she would have an opportunity to rehabilitate credibility by making a "limited explanation" of circumstances supporting conviction if government sought to use it for impeachment. D.C. Code §§ 14-305, 22-3102; U.S. Const. Amend. 1. *Bates v. United States*, 403 A.2d 1159, 1979 D.C. App. LEXIS 419 (1979).

In prosecution for unlawful entry and assault with deadly weapon, trial court did not improperly limit defendant's attempts to cross-examine government witnesses as to their possible desire to protect their employer from civil suit. D.C. Code §§ 22-502, 22-3102. *Hyman v. United States*, 342 A.2d 43, 1975 D.C. App. LEXIS 431 (1975).

False arrest and false imprisonment actions.

Genuine issue of material fact existed as to whether police commander's conduct in ordering arrests of protestors for unlawful entry of a parking garage violated a clearly established constitutional right, precluding summary judgment in favor of commander on qualified immunity grounds in protestors' §§ 1983 action alleging arrests violated First and Fourth Amendments and District of Columbia common law. *Bolger v. District of Columbia*, 608 F.Supp.2d 10, 2009 U.S. Dist. LEXIS 49777 (2009).

Former professor who sued university and officials, stemming from his suspension and removal from campus, failed to establish that he was actually detained, as required to maintain claims for false arrest and imprisonment under District of Columbia law; professor's primary complaint was that he was forced to leave campus rather than being required to stay on premises. *Saha v. Lehman*, 537 F.Supp.2d 122, 2008 U.S. Dist. LEXIS 18606 (2008), affirmed by 2008 U.S. App. LEXIS 27923 (D.C. Cir. July 31, 2008).

Off-duty police officer acting as security guard for restaurant had probable cause to arrest customer for unlawful entry after refusing to comply with officer's order to leave, and, thus, restaurant was not liable on theory of false arrest. D.C. Code 1981, § 22-3102. *Bauldock v. Davco Food, Inc.*, 622 A.2d 28, 1993 D.C. App. LEXIS 65 (1993).

Probable cause existed for security guard working in grocery store to arrest customer when customer had no constitutional or statutory right to remain on premises against wishes of grocery store manager and, therefore, grocery store could not be held liable for false arrest. *Safeway Stores, Inc. v. Kelly*, 448 A.2d 856, 1982 D.C. App. LEXIS 386 (1982).

Guilty plea.

Where defendant charged with first-degree

burglary tendered plea of guilty to lesser-included offense of unlawful entry, and trial judge was presented with a factual basis for the plea, plea should not have been refused simply because defendant refused to accompany his plea with an admission of guilt. D.C. Code §§ 22-1801(a), 22-3102; Fed. Rules Crim. Proc. rule 11, 18 U.S.C. *United States v. Gaskins*, 485 F.2d 1046, 1973 U.S. App. LEXIS 8053 (C.A.D.C. 1973).

Indictment and information.

Prosecution for unlawful entry which carried punishment by imprisonment not to exceed six months was not "infamous crime" within constitutional provision relating to prosecutions by indictment. D.C. Code § 22-3102; U.S. Const. Amend. 5. *Harvin v. United States*, 445 F.2d 675, 1971 U.S. App. LEXIS 10338 (C.A.D.C. 1971), writ of certiorari denied by 404 U.S. 943, 92 S. Ct. 292, 30 L. Ed. 2d 257, 1971 U.S. LEXIS 582 (1971).

Offense of unlawful entry may be charged by information. D.C. Code § 22-3102. *United States v. Thomas*, 444 F.2d 919, 1971 U.S. App. LEXIS 10575 (C.A.D.C. 1971).

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. D.C. Code §§ 22-101 et seq., 22-109, 22-1107, 22-1121, 22-3102, 22-3111; 40 U.S.C. § 101. *Smith v. District of Columbia*, 387 F.2d 233, 1967 U.S. App. LEXIS 5491 (C.A.D.C. 1967).

Prosecution by indictment for unlawful entry was not constitutionally required where defendant was subject to imprisonment for more than one year when sentenced under the Federal Youth Corrections Act. 18 U.S.C. §§ 5005-5026, D.C. Code § 22-3102. *Harvin v. United States*, 245 A.2d 307, 1968 D.C. App. LEXIS 201 (App. 1968), affirmed by 445 F.2d 675, 144 U.S. App. D.C. 199, 1971 U.S. App. LEXIS 10338 (1971).

Injunctions and other remedies.

Injunction prohibiting antiabortion groups from obstructing access to abortion clinics and from "inducing" or "encouraging" others to blockade clinics served significant governmental interest for purposes of determining whether injunction was overinclusive or vague,

where purposes to be served by injunction included protection of property rights and protecting patients. U.S. Const. Amend. 1. *NOW v. Operation Rescue*, 37 F.3d 646, 1994 U.S. App. LEXIS 29032 (C.A.D.C. 1994).

Injunction prohibiting antiabortion groups from obstructing access to abortion clinics and from "inducing" or "encouraging" others to blockade clinics was content neutral for purposes of determining whether injunction was overinclusive or vague, where purposes to be served by injunction which included protection of property rights and protecting patients were neutral with respect to content of speech, and did not even remotely suggest hidden purpose to regulate speech because of disagreement with message. U.S. Const. Amend. 1. *NOW v. Operation Rescue*, 37 F.3d 646, 1994 U.S. App. LEXIS 29032 (C.A.D.C. 1994).

Fines in contempt order imposed against members of antiabortion group fell into broad category of contempts involving out-of-court disobedience to complex injunctions which required protections of criminal procedure, where fines were imposed for knowing and deliberate violations of injunction prohibiting antiabortion group from obstructing access to abortion clinics and from "inducing" or "encouraging" others to blockade clinics. *NOW v. Operation Rescue*, 37 F.3d 646, 1994 U.S. App. LEXIS 29032 (C.A.D.C. 1994).

When restaurant patron was ordered to leave for being shoeless, her license to be on premises was revoked, whether legally or illegally, and she had no right to remain, even though restaurant had served patron food and received payment for it, and, her remedy, if any, was a civil action for breach of contract. D.C. Code §§ 22-3102, 47-2902. *Feldt v. Marriott Corp.*, 322 A.2d 913, 1974 D.C. App. LEXIS 250 (1974).

Instructions.

In prosecution based on defendants' unconsented entry into offices of chemical company and their destruction of certain property in it, instruction that Vietnam war was not issue in case and that, if government proved beyond reasonable doubt that one or more of defendants committed elements of crimes charged, law does not recognize as defense that defendants were motivated to commit their acts by sincere political, religious or moral convictions or in obedience to some higher law was not improper despite contention that instructions were coercive, tantamount to directed verdict of guilty and outside proper scope of judicial instruction. *U.S. v. Dougherty*, 473 F.2d 1113, 1972 U.S. App. LEXIS 8684 (C.A.D.C. 1972).

In burglary prosecution, evidence that, during period of widespread disturbances and looting, defendant was found hiding in a clothing

store which had broken window and locked door did not warrant instruction on lesser offense of unlawful entry. D.C. Code §§ 22-1801(b), 22-3102. *United States v. Sinclair*, 444 F.2d 888, 1971 U.S. App. LEXIS 11027 (C.A.D.C. 1971).

Failure to charge on unlawful entry in prosecution for housebreaking, an offense which required finding of larcenous intent in addition to elements of unlawful entry, was harmless where jury found defendant guilty of larceny as well as of housebreaking. Fed.Rules Crim.Proc. rule 31(c), 18 U.S.C.; D.C. Code 1961, §§ 22-1801, 22-3102. *Stewart v. United States*, 324 F.2d 443, 1963 U.S. App. LEXIS 4033 (C.A.D.C. 1963).

District court in housebreaking prosecution did not err in refusing instruction on lesser offenses, where request was not made until conclusion of charge and did not specify any particular offenses or show their inclusion within offense charged. Fed.Rules Crim.Proc. rules 30, 31(c), 18 U.S.C.; D.C. Code 1961, §§ 22-1801, 22-3101, 22-3102. *Britton v. U.S.*, 301 F.2d 531, 1962 U.S. App. LEXIS 5470 (C.A.D.C. 1962).

Court would not impose upon District of Columbia discovery sanctions in form of adverse inference instruction for District's conduct in destroying police radio communications sought during discovery in protestors' §§ 1983 action alleging their arrests for unlawful entry of a parking garage violated First and Fourth Amendments and D.C. common law, although District had obligation to preserve evidence and was at least negligent in allowing recordings to be destroyed; reasonable trier of fact could not infer that recordings would have contained evidence of retaliatory intent or animus, and thus recordings were not relevant. *Bolger v. District of Columbia*, 608 F.Supp.2d 10, 2009 U.S. Dist. LEXIS 49777 (2009).

Trial court's failure to give sua sponte limiting instruction on use of defendant's prior arrest to impeach defense character witnesses was not plain error in prosecution for unlawful entry; defendant had signed barring notice acknowledging that he was not allowed to be on college campus and was not found in library where he claimed that he had right to be; prosecutor only asked single question of each character witness about prior arrest and mentioned arrest once again in closing argument; and defense counsel and trial court minimized effect of prior arrest. D.C. Code 1981, § 22-3102. *Maura v. United States*, 555 A.2d 1015, 1989 D.C. App. LEXIS 43 (1989).

Absence of specific unanimity instruction was not plain error in trial on charge of unlawful entry "on or about July 2," despite evidence raising inference that defendant had appeared unbidden on balcony of complainant's apartment at extremely early hour as well as late

evening hour of such day; entire focus of trial by both prosecution and defense was on later incident, there was no indication of jury confusion and defense was based on single argument. D.C. Code 1981, § 22-3102. *Green v. United States*, 544 A.2d 714, 1988 D.C. App. LEXIS 126 (1988).

Defendant was entitled to requested instruction on crime of unlawful entry as lesser included offense of burglary where defendant testified that he stuck his body partially into the burglarized store, which, if believed, would have supported the conviction for unlawful entry. *Roane v. United States*, 432 A.2d 1218, 1981 D.C. App. LEXIS 313 (1981).

Where existence of a bona fide belief of a right to enter is genuinely questionable, an issue proper for jury's determination arises, and defendant who is accused of unlawful entry is entitled to an instruction thereon, but where there is no evidence supportive of accused's claim of a bona fide belief of a right to enter there is no duty to instruct that such a belief constitutes a valid defense. D.C. Code § 22-3102. *Smith v. United States*, 281 A.2d 438, 1971 D.C. App. LEXIS 202 (1971).

To warrant an instruction that a bona fide belief of a right to enter constitutes a defense to a charge of unlawful entry it is not sufficient that an accused merely claim a belief of a right to enter; a bona fide belief must have some reasonable basis. D.C. Code § 22-3102. *Smith v. United States*, 281 A.2d 438, 1971 D.C. App. LEXIS 202 (1971).

Defendant was not entitled to an instruction that a good-faith belief by him that he could enter area was a defense to charge of unlawful entry where defendant's transgression of construction site in the daytime when construction activity was in progress and workers were present could not be said to have created a right, or a reasonable belief in such, to trespass on the locked unguarded site at night. D.C. Code § 22-3102. *Smith v. United States*, 281 A.2d 438, 1971 D.C. App. LEXIS 202 (1971).

Lesser included offense rule was properly applied when court instructed jury that offense of larceny from interstate commerce, for which offense defendant was charged, included lesser offense of taking property without right, offense for which defendant was not charged, but, since sentence for taking property without right ran concurrently with sentence for unlawful entry, court need not consider claim of error predicated on the instruction. D.C. Code §§ 22-1211, 22-3102; 18 U.S.C. § 659. *Humphrey v. United States*, 236 A.2d 438, 1967 D.C. App. LEXIS 215 (App. 1967).

Instruction, in unlawful entry prosecution of persons who were ordered to leave White House when they violated regulations respecting visitors at White House, that jury must find beyond reasonable doubt that demand to quit premises

was made by person lawfully in charge, that a person may be lawfully in charge even though there are other persons who could, if they chose to do so, countermand or override his authority, and that with respect to given premises there may be more than one person who has authority to order a removal conformed to the testimony and correctly stated legal requirements of District of Columbia unlawful entry statute. D.C. Code 1961, § 22-3102. *Whittlesey v. United States*, 221 A.2d 86, 1966 D.C. App. LEXIS 190 (App. 1966).

Jurisdiction.

District court had power to hear pendent local trespass and public nuisance claims in federal litigation against antiabortion activists for conspiring to interfere with travel rights of women seeking abortions, where claims were sufficiently substantial to support federal jurisdiction and where local claims arose out of common nucleus of operative fact such that it would ordinarily be expected that they would be tried in same proceeding with federal claim. 42 U.S.C. § 1985(3). *NOW v. Operation Rescue*, 37 F.3d 646, 1994 U.S. App. LEXIS 29032 (C.A.D.C. 1994).

Exercise of pendent jurisdiction of local trespass and public nuisance claims in federal litigation against antiabortion activists for conspiring to interfere with travel rights of women seeking abortions was not abuse of discretion, where policies of judicial economy, convenience, and fairness to litigants were served by allowing organizations seeking to preserve woman's right to choose abortion and others to seek single injunction based on both federal and local law claims arising out of single set of facts and events, rather than pursuing parallel actions in both federal and state courts. 42 U.S.C. § 1985(3). *NOW v. Operation Rescue*, 37 F.3d 646, 1994 U.S. App. LEXIS 29032 (C.A.D.C. 1994).

United States Supreme Court's *Bray* decision, that § 1985(3) does not create cause of action against persons blocking access to abortion clinics, did not oust district court's jurisdiction over action for enforcement of permanent injunction prohibiting violations of plaintiffs' federal civil rights under § 1985(3), violations of rights under District of Columbia trespass law, and violations of District of Columbia public nuisance law; although *Bray* invalidated § 1985(3) ground for injunction, principle of pendent jurisdiction preserved court's continued jurisdiction against D.C. law violations. 42 U.S.C. § 1985(3); D.C. Code 1981, § 22-3102. *NOW v. Operation Rescue*, 816 F. Supp. 729, 1993 U.S. Dist. LEXIS 2972 (1993).

Government was not required to refer case of defendant charged with unlawful entry into his girlfriend's apartment to director of social services for consideration as intrafamily offense,

in view of fact that it was not clear that relationship between defendant and his girlfriend was close enough to come within contemplation of statute governing intrafamily offenses. D.C. Code §§ 16-1001(1)(C), 22-3102. *Jackson v. United States*, 357 A.2d 409, 1976 D.C. App. LEXIS 538 (1976).

Nature and elements of offense.

— Belief that entry is permitted, nature and elements of offense.

Police officers did not have probable cause to arrest occupants of house for committing District of Columbia offense of unlawful entry; some officers were aware that occupants had been expressly or impliedly invited onto property by a woman who, according to one occupant, was renting the house, and although someone an officer spoke with by phone said nobody had permission to be in the house, there was no indication that occupants knew or should have known they were entering against property owner's will, and although a neighbor told officers the house was supposed to be vacant, it was not boarded up or secured in way that indicated owner wanted others to keep out. *Wesby v. District of Columbia*, 841 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 5680 (2012).

Person who enters building for good purpose and with bona fide belief of his right to enter is not guilty of an unlawful entry in violation of District of Columbia statute. D.C. Code § 22-3102. *McGloin v. United States*, 232 A.2d 90, 1967 D.C. App. LEXIS 179 (App. 1967).

— Demand to quit premises, nature and elements of offense.

Genuine issue of material fact existed as to whether representative of building management informed police officers that protestors were not authorized to be in parking garage, precluding summary judgment on issue of whether officers' arrests of protestors for unlawful entry of parking garage were supported by probable cause, in §§ 1983 action alleging arrests violated First and Fourth Amendments and District of Columbia common law. *Bolger v. District of Columbia*, 608 F.Supp.2d 10, 2009 U.S. Dist. LEXIS 49777 (2009).

Absent constitutional or statutory right to remain, person lawfully on premises of commercial establishment is guilty of unlawful entry if he refuses to leave premises after demand by person lawfully in charge. *Safeway Stores, Inc. v. Kelly*, 448 A.2d 856, 1982 D.C. App. LEXIS 386 (1982).

Under District of Columbia unlawful entry statute, person may be lawfully in charge even though there are other persons who could, if they choose to do so, countermand or override his authority, and, with respect to given premises, there may be more than one person who has authority to order removal. D.C. Code 1973,

§ 22-3102. *Smith v. United States*, 445 A.2d 961, 1982 D.C. App. LEXIS 348 (1982).

Under District of Columbia unlawful entry statute, senior secret service officer on scene at White House is empowered as lawful occupant to demand that appellants quit White House grounds. D.C. Code 1973, § 22-3102. *Smith v. United States*, 445 A.2d 961, 1982 D.C. App. LEXIS 348 (1982).

Under District of Columbia unlawful entry statute making it a misdemeanor offense for any person, without lawful authority, to enter a public building against will of lawful occupant or of person lawfully in charge thereof, one who was commanding officer of White House police and who was responsible for security of building had authority to order defendants to leave when they violated the regulations respecting visitors at the White House. D.C. Code 1961, § 22-3102. *Whittlesey v. United States*, 221 A.2d 86, 1966 D.C. App. LEXIS 190 (App. 1966).

The unlawful entry statute permits a person lawfully in charge of premises to act through an agent, including the police, in demanding that unlawful occupants leave. *United States v. O'Keith*, 116 WLR 1233 (Super. Ct. 1988).

— Entry without lawful authority, nature and elements of offense.

Entry without lawful authority is requisite element of offense of unlawful entry. D.C. Code § 22-3102. *Jones v. United States*, 282 A.2d 561, 1971 D.C. App. LEXIS 211 (1971).

In a prosecution for unlawfully entering a private dwelling against the will and without consent or authority of lawful occupant, one of essential elements is whether entry was against will of one who was lawful occupant. D.C. Code 1951, §§ 11-776(b), 22-3102. *Moore v. U.S.*, 136 A.2d 868, 1957 D.C. App. LEXIS 323 (Cr.App. 1957).

— In general.

Neither the unlawful entry statute nor the forcible entry statute engrafts any additional elements on first-degree burglary statute of the District of Columbia; unlawful entry statute does not purport to amend burglary statutes and does not do so by operation of law, expressly or impliedly, nor do requirements of unlawful entry statute constitute additional elements of every second-degree burglary. D.C. Code §§ 22-1801(a, b), 22-3102. *United States v. Kearney*, 498 F.2d 61, 1974 U.S. App. LEXIS 8584 (C.A.D.C. 1974).

To prosecute a charge of unlawful entry, the government must prove that the accused: (1) entered or attempted to enter public or private premises or property; (2) did so without lawful authority; (3) did so against the express will of the lawful occupant or owner; and (4) had general intent to enter. *Bolger v. District of*

Columbia, 608 F.Supp.2d 10, 2009 U.S. Dist. LEXIS 49777 (2009).

One does not have to enter a building completely for conviction of crime of unlawful entry. *Roane v. United States*, 432 A.2d 1218, 1981 D.C. App. LEXIS 313 (1981).

Arrangement whereby defendant was occupying his girlfriend's apartment rent free, and at her indulgence, did not constitute "tenancy by sufferance," so as to preclude his conviction for unlawful entry in such apartment. D.C. Code §§ 22-3102, 45-820. *Jackson v. United States*, 357 A.2d 409, 1976 D.C. App. LEXIS 538 (1976).

Under the lease, tenants was the "lawful occupant" and the person "lawfully in charge of the premises" in question within the meaning of the statute and she was entitled to ask the police to remove from the corridor people deliberately blocking ingress to her clinic. Even if others could also demand that individuals leave the property, or might countermand tenant's order, this does not detract from her position as the person in charge of the premises in their absence. *United States v. O'Keith*, 116 WLR 1233 (Super. Ct. 1988).

— Intent, nature and elements of offense.

Element that distinguishes burglary from unlawful entry is the intent to commit crime once unlawful entry has been accomplished. D.C. Code §§ 22-1801, 22-3102. *United States v. Melton*, 491 F.2d 45, 1973 U.S. App. LEXIS 7763 (C.A.D.C. 1973).

While in some circumstances elements of unlawful entry are comprehended within those of housebreaking, latter requires also finding of larcenous intent. D.C. Code 1961, §§ 22-1801, 22-3102. *Stewart v. United States*, 324 F.2d 443, 1963 U.S. App. LEXIS 4033 (C.A.D.C. 1963).

Intent necessary to sustain conviction for unlawful entry is only defendant's general intent to be on premises contrary to will of lawful owner; evidence rebutting a further intent to commit an unlawful act goes beyond scope of charged offense. D.C. Code 1981, § 22-3102. *Artis v. United States*, 554 A.2d 327, 1989 D.C. App. LEXIS 24 (1989).

Validity of defendant's explanation that he entered university residence hall to inquire about purchasing soccer equipment from one of residents was irrelevant to question of intent necessary to sustain conviction for unlawful entry. D.C. Code 1981, § 22-3102. *Artis v. United States*, 554 A.2d 327, 1989 D.C. App. LEXIS 24 (1989).

Offense of unlawful entry is distinguished from burglary because unlawful entry does not require intent to commit particular crime. *Williams v. United States*, 549 A.2d 328, 1988 D.C. App. LEXIS 191 (1988).

Offense of unlawful entry is committed when person invades property without lawful authority and against will of occupant; there need be no showing of intent to commit particular crime inside. D.C. Code 1981, § 22-3102. *Shelton v. United States*, 505 A.2d 767, 1986 D.C. App. LEXIS 283 (1986).

Where person enters a place with a good purpose and with a bona fide belief of the right to enter, he lacks the element of criminal intent required by statute and is not guilty of unlawful entry. D.C. Code § 22-3102. *Smith v. United States*, 281 A.2d 438, 1971 D.C. App. LEXIS 202 (1971).

— Warning or notice, nature and elements of offense.

Evidence was insufficient to sustain defendant's conviction for unlawful entry, namely violating order barring him from apartment complex; barred individual was not precluded from coming to premises for legitimate reason, such as visiting tenant, and prosecution presented no evidence as to whether persons with whom defendant was associating were residents of complex and, if so, whether he was their guest. D.C. Code 1981, § 22-3102. *Bean v. United States*, 709 A.2d 85, 1998 D.C. App. LEXIS 62 (1998).

Since defendant's arrest for demonstrating in the United States Capitol Building was not valid, he could not be convicted for unlawful entry of the Capitol when he refused to leave when ordered to do so by officer. U.S. Const. Amend. 1; D.C. Code 1981, § 22-3102. *Hasty v. United States*, 669 A.2d 127, 1995 D.C. App. LEXIS 251 (1995).

Defendants who refused to leave mosque after disturbance disrupted service did not have reasonable belief in their right to remain, and thus government could establish requisite intent to commit crime of unlawful entry; defendants asserted religious, rather than legal right, to remain, and defendants acknowledged "true" owners of center and that person disturbing service may validly be requested to leave mosque. D.C. Code 1981, § 22-3102. *Darab v. United States*, 623 A.2d 127, 1993 D.C. App. LEXIS 94 (1993).

For an unlawful entry conviction when public property is involved, there must, in addition to a demand by person lawfully in charge, be some additional specific factor establishing the defendant's lack of legal right to remain. D.C. Code 1981, § 22-3102. *Byrne v. United States*, 578 A.2d 700, 1990 D.C. App. LEXIS 174 (1990).

Foreign embassy is not public property for purposes of requirement that there be a specific factor establishing a defendant's lack of legal right to remain in order for him to be convicted of unlawful entry on the basis of refusing to leave when asked. D.C. Code 1981, § 22-3102.

Byrne v. United States, 578 A.2d 700, 1990 D.C. App. LEXIS 174 (1990).

Abortion clinic lessee's right to use of corridor leading to abortion clinic made her "person lawfully in charge" within meaning of unlawful entry statute and lessee, acting through police sergeant as her agent, could demand that anti-abortion protestors leave corridor. D.C. Code 1981, § 22-3102. *Woll v. United States*, 570 A.2d 819, 1990 D.C. App. LEXIS 40 (1990).

Transit Authority's installation of pair of gates at entrance to subway, which were closed every night at conclusion of business, constituted "additional specific factor" establishing person's lack of legal right to remain at entrance at conclusion of business when gates were to be closed, and thus defendants who allegedly refused to leave entrance at that time were properly charged with unlawful entry on public property. D.C. Code 1981, § 22-3102. *United States v. Powell*, 563 A.2d 1086, 1989 D.C. App. LEXIS 171 (1989).

In case of unlawful entry, will of person in legal possession need not be oral to be express and may be expressed by sign. D.C. Code 1981, § 22-3102. *Artisist v. United States*, 554 A.2d 327, 1989 D.C. App. LEXIS 24 (1989).

By satisfying jury that defendant entered residence hall in contravention of prominently posted sign warning persons seeking entry to present identification card to security guard posted at entrance, government demonstrated defendant's intention to be on the premises contrary to university's express will. D.C. Code 1981, § 22-3102. *Artisist v. United States*, 554 A.2d 327, 1989 D.C. App. LEXIS 24 (1989).

Absence of a "no trespassing" sign alone does not suggest that a defendant was privileged to enter a private dwelling, for purposes of prosecution for unlawful entry. D.C. Code 1981, § 22-3102. *Culp v. United States*, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

For purposes of unlawful entry statute, as applied to private property, the mere demand to leave, made by the person lawfully in charge, necessarily deprives the other party of a lawful authority to remain on the premises. D.C. Code 1981, § 22-3102. *O'Brien v. United States*, 444 A.2d 946, 1982 D.C. App. LEXIS 329 (1982).

For purposes of unlawful entry statute, as applied to public property, statute requires that person lawfully in charge of the premises expressly order the other party to leave, and that, in addition to and independent of the evictor's wishes, there exists some additional specific factor establishing the other party's lack of legal right to remain. D.C. Code 1981, § 22-3102. *O'Brien v. United States*, 444 A.2d 946, 1982 D.C. App. LEXIS 329 (1982).

Under statute relating to offense of unlawful entry of property, person may not be convicted of such offense on basis of his refusal to comply with the demand that he depart from public

property unless there is an additional, specific factor establishing his lack of a legal right to be there; such factors could consist of posted regulations, signs or fences and barricades regulating public's use of government property, or other reasonable restrictions. D.C. Code § 22-3102. *Carson v. United States*, 419 A.2d 996, 1980 D.C. App. LEXIS 362 (1980).

Any grounds for defendant's alleged bona fide belief in his right to remain in his girlfriend's apartment lapsed when it became clear to him that she was ordering him to leave. D.C. Code § 22-3102. *Jackson v. United States*, 357 A.2d 409, 1976 D.C. App. LEXIS 538 (1976).

Where person in hotel has received an appropriate notice of his exclusion, that person's subsequent presence in hotel is without lawful authority and he or she is subject to arrest for crime of unlawful entry. D.C. Code § 22-3102. *Kelly v. United States*, 348 A.2d 884, 1975 D.C. App. LEXIS 292 (1975).

Where party who is not a guest in hotel was warned not to return to hotel and was subsequently found in the hotel her subsequent entrance into hotel constituted unlawful entry. D.C. Code § 22-3102. *Kelly v. United States*, 348 A.2d 884, 1975 D.C. App. LEXIS 292 (1975).

Under unlawful entry statute, one who lawfully enters may be guilty of a misdemeanor by refusing to leave after being ordered to do so by the person lawfully in charge of the premises. D.C. Code §§ 22-3102, 47-2902. *Feldt v. Marriott Corp.*, 322 A.2d 913, 1974 D.C. App. LEXIS 250 (1974).

To be against the will of the lawful occupant the entry must be against the expressed will, that is, after warning to keep off the premises. D.C. Code § 22-3102. *Smith v. United States*, 281 A.2d 438, 1971 D.C. App. LEXIS 202 (1971).

Where construction company, the occupant of lot, had posted signs indicating its rightful control of the site, it had never authorized defendant to use the site at night when no one was present, and where site was protected at night by locked gates and a mesh chain link fence topped by barbed wire, there was no need that an explicit "keep out" sign be posted to establish that defendant was acting against the will of the construction company when he entered the site. D.C. Code § 22-3102. *Smith v. United States*, 281 A.2d 438, 1971 D.C. App. LEXIS 202 (1971).

Defendant who was found wandering by police officer inside of four-unit apartment building and on the roof and fire escape thereof could properly be convicted of unlawful entry under District of Columbia statute without showing that owner had not given an express warning that he should stay out of building. D.C. Code § 22-3102. *McGloin v. United States*, 232 A.2d 90, 1967 D.C. App. LEXIS 179 (App. 1967).

For entry to be against will of lawful occupant in violation of statute entry must be against the expressed will, that is, after warning to keep off; it is not necessary that such warning be verbally expressed, it may be expressed by sign. D.C. Code 1961, § 22-3102. *Bowman v. United States*, 212 A.2d 610, 1965 D.C. App. LEXIS 223 (App. 1965).

Defendants were properly convicted under statute for unlawful entry where they, without a ticket and intent to board a train, had entered restricted area despite sign and public announcements whereby only persons having tickets were permitted through the gate to the restricted area. D.C. Code 1961, § 22-3102. *Bowman v. United States*, 212 A.2d 610, 1965 D.C. App. LEXIS 223 (App. 1965).

Parties and standing.

Organizations whose members were alleged to be women who would need to use abortion and family planning clinics in metropolitan area had standing to assert rights of those members in suit against antiabortion activists regarding "blockades" of facilities. U.S. Const. Art. 3, § 1 et seq. *NOW v. Operation Rescue*, 747 F. Supp. 760, 1990 U.S. Dist. LEXIS 9487 (1990), modified by 816 F. Supp. 729, 1993 U.S. Dist. LEXIS 2972 (D.D.C. 1993).

Health care facilities that provided abortion services had standing to assert rights of their patients in suit against antiabortion activists; activists were alleged to have "blockaded" facilities, patients themselves faced practical obstacles to effective advocacy, and facilities' physicians were "intimately involved" in constitutionally protected abortion decision. U.S. Const. Art. 3, § 1 et seq. *NOW v. Operation Rescue*, 747 F. Supp. 760, 1990 U.S. Dist. LEXIS 9487 (1990), modified by 816 F. Supp. 729, 1993 U.S. Dist. LEXIS 2972 (D.D.C. 1993).

Presumptions and burden of proof.

In order to properly infer that unlawful entry was with specific criminal purpose, jury must have before it evidence of circumstances other than mere unauthorized presence on another's property which would indicate such purpose; these other circumstances are those which might lead reasonable people, based upon their common experience, to conclude beyond reasonable doubt that defendant intended to commit some crime upon premises. D.C. Code 1981, §§ 22-1801, 22-3102. *Shelton v. United States*, 505 A.2d 767, 1986 D.C. App. LEXIS 283 (1986).

In prosecuting a charge of unlawful entry, the government must prove that the accused entered or attempted to enter public or private premises or property, did so without lawful authority, did so against express will of the lawful occupant or owner, and had general intent to enter. D.C. Code 1981, § 22-3102.

Culp v. United States, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

One of the necessary elements for unlawful entry conviction is proof that defendant entered or attempted to enter premises without lawful authority against will of its lawful occupant. D.C. Code § 22-3102. *Dent v. United States*, 271 A.2d 699, 1970 D.C. App. LEXIS 369 (App. 1970).

Questions of law and fact.

Issue of whether police officers had objective, probable cause to arrest arrestee for unlawful entry was for jury in false arrest action. *District of Columbia v. Murphy*, 635 A.2d 929, 1993 D.C. App. LEXIS 324 (1993).

Evidence in suit for false arrest and false imprisonment created jury question on issue whether police had probable cause to arrest apartment tenant's girlfriend for unlawful entry; although tenant told police that she wanted her boyfriend out, nothing indicated that she told officers that she had asked boyfriend to leave and he had refused, and boyfriend denied that officers said anything to him before they forced him out of apartment. *District of Columbia v. Murphy*, 631 A.2d 34, 1993 D.C. App. LEXIS 217 (1993), reaffirmed by 635 A.2d 929, 1993 D.C. App. LEXIS 324 (D.C. 1993).

In prosecution for unlawful entry on Air Force base, evidence that defendant had been officially barred from Air Force base by base commander was for jury on question whether defendant voluntarily entered premises knowing he was acting against will of person in charge. D.C. Code 1973, § 22-3102. *McEachin v. United States*, 432 A.2d 1212, 1981 D.C. App. LEXIS 312 (1981).

While bona fide belief in one's authority to enter or remain upon premises may negate criminal intent and thereby exonerate behavior which otherwise contravenes unlawful entry statute, there must be sufficient evidence that belief had a reasonable basis before issue properly may be submitted to jury. D.C. Code § 22-3102. *Leiss v. United States*, 364 A.2d 803, 1976 D.C. App. LEXIS 366 (1976), writ of certiorari denied by 430 U.S. 970, 97 S. Ct. 1654, 52 L. Ed. 2d 362, 1977 U.S. LEXIS 1515 (1977).

Whether there was any justification for defendant's claim in a reasonable belief in his right to remain on White House grounds after public visiting hours were over was jury question, in prosecution for unlawful entry. D.C. Code § 22-3102. *Leiss v. United States*, 364 A.2d 803, 1976 D.C. App. LEXIS 366 (1976), writ of certiorari denied by 430 U.S. 970, 97 S. Ct. 1654, 52 L. Ed. 2d 362, 1977 U.S. LEXIS 1515 (1977).

In prosecution for unlawful attempt to enter a private building, evidence was sufficient to raise jury question as to defendant's guilt. D.C. Code 1951, § 22-3102. *McFarland v. U.S.*, 163

A.2d 627, 1960 D.C. App. LEXIS 246 (Cr.App. 1960).

In prosecution for unlawfully entering a private dwelling against the will and without consent or authority of lawful occupant, wherein complaining witness presented evidence tending to show that she was tenant in possession of apartment and defense introduced testimony of rental agent that apartment was rented to a couple, whether complainant was a lawful occupant was a question for the jury. D.C. Code 1951, §§ 11-776(b), 22-3102. *Moore v. U.S.*, 136 A.2d 868, 1957 D.C. App. LEXIS 323 (Cr.App. 1957).

Review.

Jury's verdict, finding defendant guilty of first-degree burglary which could not stand because of lack of proof of intent to commit crime in premises, would not be taken as indicating that jury found all elements asserting to conclude that he had committed a forcible entry and therefore Court of Appeals could not authorize on remand a judgment of conviction of forcible entry even though evidence was presented at trial from which jury might have concluded that defendant had committed that offense; it was open to government to decline the unlawful entry conviction on remand and to seek instead to indict and prosecute for forcible entry. D.C. Code § 22-3102; 18 U.S.C. § 2106. *United States v. Melton*, 491 F.2d 45, 1973 U.S. App. LEXIS 7763 (C.A.D.C. 1973).

Where defendant's first-degree burglary conviction had to be set aside for lack of proof of intent to commit crime in premises entered but jury necessarily found facts required for conviction of lesser included offense of unlawful entry and the evidence was sufficient to support this determination, Court of Appeals would remand case with instructions to enter, if government consents, judgment of conviction of unlawful entry or, if court believes it in interest of justice, to grant new trial on lesser offense. D.C. Code §§ 22-1801, 22-3102. *United States v. Melton*, 491 F.2d 45, 1973 U.S. App. LEXIS 7763 (C.A.D.C. 1973).

Although conviction for second-degree burglary was vacated because of insufficiency of indictment, government could seek another grand jury indictment for such offense, but since indictment was sufficient to charge an unlawful entry and evidence was sufficient to support such a conviction, case was remanded for entry of judgment of conviction for unlawful entry if government did not object and trial court considered such action in the interests of justice; otherwise government could decide whether it wished to submit defendant's case again to grand jury. D.C. Code §§ 22-1801(b), 22-3102; Fed. Rules Crim. Proc. rule 12(b)(2), 18 U.S.C. *United States v. Seegers*, 445 F.2d 232, 1971 U.S. App. LEXIS 10574 (C.A.D.C. 1971).

Immediate discovery was not appropriate on remand of selective prosecution claim arising from prosecutor's refusal to divert political protestors charged with unlawful entry where Government had not had opportunity to respond to demonstrators' prima facie case of improper motivation and in camera discovery of prosecutor's documents may be required. D.C. Code 1981, § 22-3102; Criminal Rule 26.2(c); U.S. Const. Amends. 1, 5, 14. *Fedorov v. United States*, 600 A.2d 370, 1991 D.C. App. LEXIS 326 (1991).

Criminal case in which Court of Appeals reversed second degree burglary conviction on ground that trial court erroneously failed to give requested instruction on lesser included offense of unlawful entry was remanded for entry of judgment of conviction for unlawful entry or, if government objected, new trial where, in finding second-degree burglary, jury necessarily found defendant guilty of lesser included offense and, by virtue of defendant's admission that half his body was inside store and his failure to assert legal justification for being there, defendant did not contest unlawful entry charge. *Roane v. United States*, 432 A.2d 1218, 1981 D.C. App. LEXIS 313 (1981).

Record did not disclose abuse of discretion in denial of defendants' motion for new trial in prosecution for unlawful entry. D.C. Code 1961, § 22-3102. *Fatemi v. United States*, 192 A.2d 525, 1963 D.C. App. LEXIS 258 (App. 1963).

Right to and conduct of counsel.

In prosecution for unlawful entry of the United States Capitol Grounds, defendant's decision to waive his right to counsel was knowing and intelligent despite inadequate colloquy by trial court where defendant was represented by counsel prior to his waiver decision and knew that standby counsel would be appointed, standby counsel's participation enhanced defendant's representation, and defendant was aware of nature of the charges he faced and possible punishments therefor since he had seen both before. D.C. Code 1981, § 22-3102. *Abney v. United States*, 464 A.2d 106, 1983 D.C. App. LEXIS 435 (1983).

In prosecution for unlawful entry of the United States Capitol Grounds, prosecutor's comments on defendant's pleas for sympathy were appropriate under the circumstances, and did not constitute prosecutor's personal opinion on the merits of defendant's defense. D.C. Code 1981, § 22-3102. *Abney v. United States*, 464 A.2d 106, 1983 D.C. App. LEXIS 435 (1983).

Motion to withdraw as counsel on appeal asserting that trial counsel failed for nontactical reasons to request severance of counts of destroying property after trial court granted motion for judgment of acquittal on one count and denied motion as to second count did not raise question of professional incompe-

tence; issue on appeal could be treated in terms of whether a new trial should have been granted. U.S. Const. Amend. 6; D.C. Code § 22-3102; D.C. Code SCR, Criminal Rule 33. *Angarano v. United States*, 312 A.2d 295, 1973 D.C. App. LEXIS 383 (1973).

Fact that new counsel was appointed not more than 60 minutes before trial did not amount to ineffective assistance of counsel of defendant charged with simple assault, unlawful entry and petit larceny where no continuance was requested and defendant announced he was ready for trial, factual situation was not so complex as to necessitate any extensive investigation and there were no witnesses that defense could have called, new counsel was experienced and diligent and made no claim that he was hampered by appointment shortly before trial. D.C. Code 1967, §§ 22-504, 22-2202, 22-3102. *Tuttle v. United States*, 238 A.2d 590, 1968 D.C. App. LEXIS 131 (App. 1968).

Right to trial by jury.

Prosecutions under threats and unlawful entry statutes, with their maximum penalties of six months in prison, entitled defendants to trials by jury. U.S. Const. Amend. 6; D.C. Code 1981, §§ 16-705(b), 22-507, 22-3102. *Turner v. Bayly*, 673 A.2d 596, 1996 D.C. App. LEXIS 39 (1996).

Searches and seizures.

Police officers investigating a rumor that a high school student had threatened to "shoot up" the school had reasonable basis for fearing that violence was imminent, entitling them to qualified immunity in action based on their warrantless entry into student's home; student's parents did not initially answer officers' knock at door or the telephone, when student's mother finally came to door, she did not inquire about the reason for officers' visit or express concern that they were investigating her son, and she then turned and ran back into the house when officers asked her if there were any guns inside. *Ryburn v. Huff*, 132 S. Ct. 987, 181 L. Ed. 2d 966, 2012 U.S. LEXIS 910 (2012), remanded by 676 F.3d 930, 2012 U.S. App. LEXIS 7920 (9th Cir. 2012).

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. D.C. Code §§ 22-3102, 22-3601; D.C. Code 1961, §§ 33-402, 33-416a(b)(1)(B). *Keith v. United States*, 232 A.2d 92, 1967 D.C. App. LEXIS 181 (App. 1967).

Sentence and punishment.

Where youth was found guilty of unlawful entry, an offense punishable by fine or imprisonment in jail for not more than six months, he was subject to sentence under District of Columbia Code or under Youth Corrections Act,

and was properly sentenced under latter, which authorizes sentence thereunder on conviction of offense punishable by imprisonment, despite youth's service of seven months' presentence jail time for which he claimed credit under statute. D.C. Code §§ 22-1801(b), 22-3102, 22-3201, 22-3202, 22-3202(d)(1); 18 U.S.C. §§ 3568, 5010(b), 5017(c), 5021, 5024. *United States v. Lewis*, 447 F.2d 1262, 1971 U.S. App. LEXIS 8961 (C.A.D.C. 1971).

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. D.C. Code §§ 22-3102, 22-3601; D.C. Code 1961, §§ 33-402, 33-416a(b)(1)(B). *Keith v. United States*, 232 A.2d 92, 1967 D.C. App. LEXIS 181 (App. 1967).

Summary judgment.

Genuine issue of material fact as to whether police officers who participated in arrests for District of Columbia offense of unlawful entry that were not supported by probable cause were aware that a woman who was supposedly renting the house had given the arrestees permission to enter the house precluded summary judgment on qualified immunity grounds on the arrestees' § 1983 claims of unlawful arrest, even if the officers were ordered by superior officers to make the arrests, or they relied on the probable cause determination of one or more of their fellow officers. *Wesby v. District of Columbia*, 841 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 5680 (2012).

Unlawful assembly.

Evidence in prosecution of defendants for unlawful assembly, including testimony of hotel security chief that most participants at convention at hotel arrived by automobile and used driveway to reach hotel, supported trial court's finding that driveway was part of "entrance" to building within meaning of unlawful assembly statute prohibiting the congregation or assembly at entrance of any private building or enclosure. D.C. Code 1981, § 22-1107. *Morgan v. District of Columbia*, 476 A.2d 1128, 1984 D.C. App. LEXIS 416 (1984).

Evidence in defendants' prosecution for unlawful assembly, including evidence that police made several announcements asking defendants to leave driveway of hotel, but that defendants failed to do so, was sufficient to support finding that defendants intended to obstruct entrance to hotel within meaning of unlawful assembly statute. D.C. Code 1981, § 22-1107. *Morgan v. District of Columbia*, 476 A.2d 1128, 1984 D.C. App. LEXIS 416 (1984).

Validity.

Reviewing court was not concerned with ap-

plication of statute to general public and could properly decide, on contention of vagueness, only whether application of unlawful entry statute to defendants under facts of case was constitutional. U.S. Const. Amend. 1; D.C. Code 1973, § 22-3102. *Smith v. United States*, 445 A.2d 961, 1982 D.C. App. LEXIS 348 (1982).

Unlawful entry statute is not impermissibly vague and does not contravene principles of due process on theory that it fails to prescribe ascertainable standard for enforcement, and thereby vests unfettered discretion in law enforcement officials, or that it fails to adequately apprise potential offenders of precise nature of conduct proscribed. U.S. Const. Amends. 1, 5; D.C. Code § 22-3102. *Leiss v. United States*, 364 A.2d 803, 1976 D.C. App. LEXIS 366 (1976), writ of certiorari denied by 430 U.S. 970, 97 S. Ct. 1654, 52 L. Ed. 2d 362, 1977 U.S. LEXIS 1515 (1977).

Verdict.

Verdict was equivocal in case where defendant was charged with housebreaking and jury was instructed on elements of both housebreaking and on lesser included offense of unlawful entry and returned one word verdict of "guilty" without specifying to which offense this finding related, and conviction for housebreaking could not be founded upon it. D.C. Code §§ 22-1801, 22-3102; Fed. Rules Crim. Proc. rule 31(c), 18 U.S.C. *Glenn v. United States*, 420 F.2d 1323, 1969 U.S. App. LEXIS 11398 (C.A.D.C. 1969).

Weight and sufficiency of evidence.

Evidence, including evidence that defendant was discovered by occupant of home about halfway through window, sustained conviction for unlawful entry. D.C. Code § 22-3102. *United States v. Thomas*, 444 F.2d 919, 1971 U.S. App. LEXIS 10575 (C.A.D.C. 1971).

Convictions of unlawful entry in connection with disturbance at mosque were supported by evidence that defendants refused to leave mosque after disturbance had disrupted service and they had been asked to leave by person with lawful authority to do so. D.C. Code 1981, § 22-3102. *Darab v. United States*, 623 A.2d 127, 1993 D.C. App. LEXIS 94 (1993).

Conviction of unlawful entry was supported by sufficient evidence, showing that defendant refused to leave senator's office when asked to leave by agent of person lawfully in charge of office. D.C. Code 1981, § 22-3102. *Hemmati v. United States*, 564 A.2d 739, 1989 D.C. App. LEXIS 184 (1989).

Defendant could not credibly assert that his testimony that he entered residence hall to inquire about purchasing soccer equipment from one of residents showed that he entered with permission of lawful occupant where resident testified that he had no soccer equipment for sale and did not know defendant. D.C. Code

1981, § 22-3102. *Artisst v. United States*, 554 A.2d 327, 1989 D.C. App. LEXIS 24 (1989).

Evidence was sufficient to permit reasonable trier of fact to find that defendant had specific intent to steal when he entered dormitory room where evidence, including admission by defendant to police officer, indicated that defendant had stolen jewelry from another dormitory room on prior occasion, even though jury had acquitted defendant of earlier charge. *Williams v. United States*, 549 A.2d 328, 1988 D.C. App. LEXIS 191 (1988).

Fact that defendant entered premises without permission to do so was not sufficient evidence of intention to steal, so as to sustain burglary conviction, in absence of other circumstances indicating such intent, but was sufficient to establish unlawful entry. D.C. Code 1981, §§ 22-1801, 22-3102. *Shelton v. United States*, 505 A.2d 767, 1986 D.C. App. LEXIS 283 (1986).

Evidence was sufficient to sustain defendants' convictions for unlawful entry arising from their failure to vacate an abortion facility after a demand to leave had been made. D.C. Code 1973, § 22-3102. *Grogan v. United States*, 435 A.2d 1069, 1981 D.C. App. LEXIS 373 (1981).

In proceeding in which defendants were convicted of unlawful entry, evidence, including

testimony that tourist line was separated from White House lawn by chain suspended from stanchions and photograph showing tourist roadway, the separating chain and the lawn, was sufficient to have warranted a determination that defendants' presence on White House lawn was unauthorized. D.C. Code § 22-3102. *Carson v. United States*, 419 A.2d 996, 1980 D.C. App. LEXIS 362 (1980).

Evidence was sufficient to sustain conviction for unlawful entry. D.C. Code § 22-3102. *Jones v. United States*, 282 A.2d 561, 1971 D.C. App. LEXIS 211 (1971).

Evidence, including testimony that defendant was in parts of airline offices which were not open to the public, sustained conviction for unlawful entry. D.C. Code § 22-3102. *Bond v. United States*, 233 A.2d 506, 1967 D.C. App. LEXIS 193 (App. 1967).

Evidence supported conviction for unlawful entry. D.C. Code § 22-3102. *Perry v. United States*, 230 A.2d 721, 1967 D.C. App. LEXIS 174 (App. 1967).

Evidence, including evidence as to exclusive control or possession of television in defendant, sustained conviction for unlawful entry and petit larceny. D.C. Code 1961, §§ 22-2202, 22-3102. *Benbow v. United States*, 227 A.2d 772, 1967 D.C. App. LEXIS 145 (App. 1967).

§ 22-3303. Grave robbery; buying or selling dead bodies.

Whoever, without legal authority or without the consent of the nearest surviving relative, shall disturb or remove any dead body from a grave for the purpose of dissecting, or of buying, selling, or in any way trafficking in the same, shall be imprisoned not less than 1 year nor more than 3 years.

(Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 891.)

Cross references. — Unlawful traffic in dead bodies, see § 3-206.

Prior Codifications. — 1981 Ed., § 22-3103.

1973 Ed., § 22-3103.

§ 22-3304. Depredation of fixtures in houses. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 825; Apr. 29, 2004, D.C. Law 15-154, § 3(k), 50 DCR 10996.)

Prior Codifications. — 1981 Ed., § 22-3104.

1973 Ed., § 22-3104.

Legislative history of Law 15-154. — Law 15-154, the "Elimination of Outdated Crimes Amendment Act of 2003", was introduced in

Council and assigned Bill No. 15-79, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on October 7, 2003, and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-255 and

transmitted to both Houses of Congress for its review. D.C. Law 15-154 became effective on April 29, 2004.

§ 22-3305. Placing explosives with intent to destroy or injure property.

Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not exceeding \$1,000 and by imprisonment for not less than 2 years or more than 10 years.

(Mar. 3, 1901, ch. 854, § 825a; Mar. 3, 1905, 33 Stat. 1033, ch. 1461; Dec. 27, 1967, 81 Stat. 739, Pub. L. 90-226, title VI, § 607.)

Prior Codifications. — 1981 Ed., § 22-3105. 1973 Ed., § 22-3105.

§ 22-3306. Defacing books, manuscripts, publications, or works of art.

Any person who shall wrongfully deface, injure, or mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia, whether the property of the United States or of the District of Columbia or of any individual or corporation in said District, or who shall wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, public record, print, engraving, medal, newspaper, or work of art, the property of the United States or of the District of Columbia, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a fine of not less than \$10 nor more than \$1,000, and by imprisonment for not less than 1 month nor more than 180 days, or both, for every such offense.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 849; June 30, 1902, 32 Stat. 535, ch. 1329; Dec. 1, 1982, D.C. Law 4-164, § 601(d), 29 DCR 3976; Sept. 5, 1985, D.C. Law 6-19, § 14(b), 32 DCR 3590; Aug. 20, 1994, D.C. Law 10-151, § 105(n), 41 DCR 2608.)

Prior Codifications. — 1981 Ed., § 22-3106.

1973 Ed., § 22-3106.

Emergency legislation. — For temporary amendment of section, see § 105(n) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133,

which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-19. — Law 6-19, the “District of Columbia Public Records Management Act of 1985,” was introduced in Council and assigned Bill No. 6-139, which was referred to the Committee on Government Op-

erations. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 10, 1985, it was assigned Act No. 6-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-151. — Law 10-151, the “Omnibus Criminal Justice Reform Amendment Act of 1994,” was introduced in

Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

§ 22-3307. Destroying or defacing public records.

Whoever maliciously or with intent to injure or defraud any other person defaces, mutilates, destroys, abstracts, or conceals the whole or any part of any record authorized by law to be made, or pertaining to any court or public office in the District, or any paper duly filed in such court or office, shall be fined not more than \$1,000 or imprisoned not more than 180 days, or both.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 844; Aug. 20, 1994, D.C. Law 10-151, § 105(o), 41 DCR 2608.)

Cross references. — Tampering with physical evidence, see § 22-723.

Prior Codifications. — 1981 Ed., § 22-3107.

1973 Ed., § 22-3107.

Emergency legislation. — For temporary amendment of section, see § 105(o) of the Om-

nibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 22-3306.

§ 22-3308. Cutting down or destroying things growing on or attached to the land of another. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 847; Aug. 12, 1937, 50 Stat. 629, ch. 599; Aug. 20, 1994, D.C. Law 10-151, § 105(p), 41 DCR 2608; June 12, 2003, D.C. Law 14-309, § 202, 50 DCR 888.)

Prior Codifications. — 1981 Ed., § 22-3108.

1973 Ed., § 22-3108.

Emergency legislation. — For temporary amendment of section, see § 105(p) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary (90 day) amendment of section, see § 7(b) of the Sentencing Reform Con-

gressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, October 25, 2000, 47 DCR 9443).

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 22-3306.

Legislative history of Law 14-309. — For Law 14-309, see notes following § 22-3310.

§ 22-3309. Destroying boundary markers.

Whoever maliciously cuts down, destroys, or removes any boundary tree, stone, or other mark or monument, or maliciously effaces any inscription thereon, either of his or her own lands or of the lands of any other person whatsoever, even though such boundary or bounded trees should stand within

the person's own land so cutting down and destroying the same, shall be fined not more than \$1,000 and imprisoned not exceeding 180 days.

(Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 880; May 21, 1994, D.C. Law 10-119, § 2(u), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(q), 41 DCR 2608.)

Prior Codifications. — 1981 Ed., § 22-3109.

1973 Ed., § 22-3109.

Emergency legislation. — For temporary amendment of section, see § 105(q) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-119. — Law 10-119, the "Anti-Gender Discriminatory Language Criminal Offenses Amendment Act of 1994," was introduced in Council and assigned

Bill No. 10-332, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-209 and transmitted to both Houses of Congress for its review. D.C. Law 10-119 became effective on May 21, 1994.

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 22-3306.

§ 22-3310. Destroying vines, bushes, shrubs, trees or protections thereof; penalty.

It shall be unlawful for any person willfully to top, cut down, remove, girdle, break, wound, destroy, or in any manner injure any vine, bush, shrub, or tree not owned by that person, or any of the boxes, stakes or any other protection thereof, under a penalty not to exceed, for each and every such offense:

(1) In the case of any tree 55 inches or greater in circumference when measured at a height of four and one half feet, \$15,000 or imprisonment for not more than 90 days, or both; or

(2) For vines, bushes, shrubs, and smaller trees, \$5,000 or imprisonment for not more than 30 days, or both.

(July 29, 1892, 27 Stat. 324, ch. 320, § 13; June 19, 2001, D.C. Law 13-314, § 3, 48 DCR 2076; June 12, 2003, D.C. Law 14-309, § 201, 50 DCR 888; Apr. 13, 2005, D.C. Law 15-354, § 21(b), 52 DCR 2638.)

Cross references. — Conduct of prosecutions under this section, see § 22-1809.

Cutting down or destroying things on the land of another, see § 22-3308.

Prior Codifications. — 1981 Ed., § 22-3110.

1973 Ed., § 22-3110.

Effect of amendments. — D.C. Law 13-314 substituted "\$500" for "\$50".

D.C. Law 14-309 rewrote the section which had read as follows: "It shall not be lawful for any person or persons to girdle, break, wound, destroy, or in any manner injure any of the trees growing or planted and set, or which may hereafter be planted and set on any of the public grounds, open space, or squares or on any private lot, or on any of the streets, or avenues, roads or highways, in the District of Columbia, or any of the boxes, stakes, or any other protection thereof, under a penalty of not exceeding \$500 for each and every such offense;

and if any person or persons shall tie or in any manner fasten a horse or horses to any of the trees, boxes, or other protection thereof on any streets or avenues, roads, or highways, on any of the public grounds belonging to the United States, or on any of the streets, avenues, or alleys, in the District of Columbia, each and every such offender shall forfeit and pay for each offense a sum not exceeding \$10."

D.C. Law 15-354, in subsecs. (a) and (b), validated a previously made technical correction.

Legislative history of Law 13-314. — Law 13-314, the "Tree Protection Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-928, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 24, 2001, it was assigned Act No.

13-594 and transmitted to both Houses of Congress for its review. D.C. Law 13-314 became effective on June 19, 2001.

Legislative history of Law 14-309. — Law 14-309, the “Urban Forest Preservation Act of 2002”, was introduced in Council and assigned Bill No. 14-307, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-614 and transmitted to both Houses of Con-

gress for its review. D.C. Law 14-309 became effective on June 12, 2003.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

§ 22-3311. Disorderly conduct in public buildings or grounds; injury to or destruction of United States property.

Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds belonging to the United States within the District of Columbia, or who shall wilfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall be fined not more than \$500, or imprisoned not more than 6 months, or both.

(July 29, 1892, 27 Stat. 325, ch. 320, § 15; Oct. 20, 1967, 81 Stat. 277, Pub. L. 90-108, § 2.)

Cross references. — Conduct of prosecutions under this section, see § 22-1809.

Prior Codifications. — 1981 Ed., § 22-3111.

1973 Ed., § 22-3111.

CASE NOTES

ANALYSIS

Indictment and information.
Prosecution of offenders.
Sentence and punishment.

Indictment and information.

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor

that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. D.C. Code §§ 22-101 et seq., 22-109, 22-1107, 22-1121, 22-3102, 22-3111; 40 U.S.C. § 101. *Smith v. District of Columbia*, 387 F.2d 233, 1967 U.S. App. LEXIS 5491 (C.A.D.C. 1967).

Information charging defendant arrested during peace demonstration with disorderly conduct in that she did with intent to provoke breach of peace congregate with others on public street and on grounds of United States Capitol, and did refuse to move, which failed to specify which of several potentially applicable statutes was basis of prosecution, was insufficient. D.C. Code §§ 22-1101 et seq., 22-1107, 22-1121 and subd. (2), 22-3101 et seq., 22-3111.

Smith v. District of Columbia, 387 F.2d 233, 1967 U.S. App. LEXIS 5491 (C.A.D.C. 1967).

Prosecution of offenders.

United States, through United States attorney, and not the District of Columbia, through the corporation counsel, is proper prosecutive authority for alleged violation of statute prescribing maximum fine of \$500, or imprisonment for not more than six months, or both, for disorderly and unlawful conduct in or about public buildings and public grounds belonging to the United States within the district. D.C. Code §§ 22-1107, 22-3111, 23-101(a, f). District of Columbia v. Ackerman, 283 A.2d 24, 1971 D.C. App. LEXIS 210 (1971).

Sentence and punishment.

Since prosecutions were brought under gen-

eral disorderly conduct sections rather than the Capitol Grounds statute, defendants should have been sentenced under statute providing that any person guilty of disorderly conduct in or about public buildings and public grounds shall upon conviction thereof be fined not more than \$50 so that sentences of 90 days in jail were improper notwithstanding that government might have had a choice as to which statute it would proceed under. D.C. Code 1961, §§ 9-125, 22-1121, 22-3111. Feeley v. District of Columbia, 220 A.2d 325, 1966 D.C. App. LEXIS 187 (App. 1966), vacated by 387 F.2d 216, 128 U.S. App. D.C. 258, 1967 U.S. App. LEXIS 6298 (1967).

§ 22-3312. Destroying or defacing buildings, statues, or monuments. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-203, § 6, 30 DCR 180.)

Prior Codifications. — 1981 Ed., § 22-3112.

Legislative history of Law 4-203. — For

legislative history of D.C. Law 4-203, see Historical and Statutory Notes following § 22-3312.01.

§ 22-3312.01. Defacing public or private property.

It shall be unlawful for any person or persons willfully and wantonly to disfigure, cut, chip, or cover, rub with, or otherwise place filth or excrement of any kind; to write, mark, or print obscene or indecent figures representing obscene or objects upon; to write, mark, draw, or paint, without the consent of the owner or proprietor thereof, or, in the case of public property, of the person having charge, custody, or control thereof, any word, sign, or figure upon:

(1) Any property, public or private, building, statue, monument, office, public passenger vehicle, mass transit equipment or facility, dwelling or structure of any kind including those in the course of erection; or

(2) The doors, windows, steps, railing, fencing, balconies, balustrades, stairs, porches, halls, walls, sides of any enclosure thereof, or any movable property.

(Mar. 10, 1983, D.C. Law 4-203, § 2, 30 DCR 180; June 3, 1997, D.C. Law 11-275, § 7, 44 DCR 1408.)

Cross references. — Wastewater system, tampering with and misuse, see § 8-105.05.

Section references. — This section is referred to in § 22-3312.04.

Prior Codifications. — 1981 Ed., § 22-3112.1.

Legislative history of Law 4-203. — Law 4-203, the "Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty

Act of 1982," was introduced in Council and assigned Bill No. 4-455, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-287 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-275. — Law 11-275, the “Second Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second read-

ings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Arrest.
Construction and application.
Indictment and information.
Prosecution of offenders.
Questions of law and fact.
Weight and sufficiency of evidence.

Admissibility of evidence.

Trial court's error in permitting government to examine victim on re-direct examination about prior acts of violence defendant allegedly committed against her was harmless, in prosecution for malicious destruction of property; it was unlikely, even if government had not been permitted to “rebut” defendant's assertion that victim was biased, that trial court would have accepted defendant's theory, since trial court clearly believed victim had concrete reason to call police, and it was clear from record that government did not plan at outset to introduce the evidence, but only introduced it on re-direct after defense counsel questioned victim on cross-examination about her relationship with defendant. *Goines v. United States*, 905 A.2d 795, 2006 D.C. App. LEXIS 489 (2006).

Even if defense counsel's cross-examination of victim in attempt to elicit testimony from her implying that she was biased against defendant opened door to further testimony rebutting that implication, doctrine of curative admissibility did not apply to permit government to examine victim on re-direct about prior acts of violence defendant allegedly committed against her, in prosecution for malicious destruction of property; any prejudice to government that might have resulted from defense counsel's suggestion that victim fabricated charges due to bias against defendant was essentially nullified by victim's repeated assertions during cross-examination that this was not the case, and, thus introduction of other crimes evidence served only to prejudice defendant. *Goines v. United States*, 905 A.2d 795, 2006 D.C. App. LEXIS 489 (2006).

In prosecution for destroying private property, where complainant purchased premises at foreclosure and sent a letter to defendant alleging ownership, and successfully prosecuted a suit for eviction, while deed was admissible evidence of ownership, it was not the only admissible evidence and complainant's testi-

mony relating thereto, was equally admissible. D.C. Code 1951, § 22-3112. *Sims v. U.S.*, 120 A.2d 69, 1956 D.C. App. LEXIS 174 (Cr.App. 1956).

Arrest.

Officer had probable cause to arrest defendant for committing misdemeanor offense in his presence, such that defendant's arrest was lawful and subsequent search of defendant's person was reasonable within the meaning of the Fourth Amendment; since officer saw defendant urinate on front bumper of van parked in gas station parking lot, officer had probable cause to arrest defendant for disorderly conduct and defacing of private property. U.S. Const.Amend. 4; D.C. Code §§ 23-581, 878 A.2d 486 (a).

Construction and application.

District of Columbia's prohibiting demonstrator from using sidewalk chalk to promote a religious belief in front of White House, pursuant to statute prohibiting defacement of public and private property, did not substantially burden demonstrator's exercise of religion, as would violate Religious Freedom Restoration Act (RFRA); chalking was only one means by which demonstrator could convey his message, and demonstrator could still picket, engage in a public prayer vigil or use other means. *Mahoney v. Doe*, 642 F.3d 1112, 2011 U.S. App. LEXIS 12478 (C.A.D.C. 2011).

District of Columbia statute prohibiting defacement of public and private property was narrowly tailored to serve a significant government interest in esthetics as applied to demonstrator who sought to engage in speech through sidewalk chalk demonstration in front of White House; statute was content neutral and prohibited certain conduct without reference to message conveyed, District sought to control esthetic appearance of street in front of White House, statute was tailored to tangible medium that created the very problem sought to be remedied, and demonstrator had alternate channels of communication, including conducting an assembly with signs and banners. *Mahoney v. Doe*, 642 F.3d 1112, 2011 U.S. App. LEXIS 12478 (C.A.D.C. 2011).

Application of District of Columbia defacement statute to prohibit demonstrators from engaging in “chalk art” demonstrations on public promenade directly in front of the White

House did not violate demonstrators' First Amendment rights; restriction on chalking was a content neutral, narrowly tailored means of advancing the government's significant interests, which were unrelated to the suppression of expression, in keeping the promenade free of "visual clutter," eliminated no more than the exact source of the "evil" it sought to remedy, and allowed demonstrators to engage in a rich variety of expressive activities, such as picketing, marching, carrying signs, singing, shouting, chanting, performing dramatic presentations, and appealing to passers-by. *Mahoney v. District of Columbia*, 662 F.Supp.2d 74, 2009 U.S. Dist. LEXIS 90231 (2009), affirmed by 642 F.3d 1112, 395 U.S. App. D.C. 291, 2011 U.S. App. LEXIS 12478 (2011).

This section specifically covers "filth or excrement of any kind," and by this expansive language the City Council clearly intended for this section to reach beyond just urine or fecal matter. Thus, the throwing of blood on the pillars of the White House constitutes defacement of public property, which this section prohibits. *United States v. Bohlke*, 116 WLR 1697 (Super. Ct. 1988).

Because redundancy in criminal statutes is permissible, it does not matter that blood stains injure property for purposes of § 22-403, and also under this section. *United States v. Berberich*, 120 WLR 537 (Super. Ct. 1992).

Indictment and information.

Maximum fine for defacing property was greater than maximum fine for malicious destruction of property and, therefore, since their maximum prison term was same, defacing property was not lesser included offense of malicious destruction of property; accordingly, defendant, who was indicted for malicious destruction of property, could not be convicted of defacing property. D.C. Code 1981, §§ 22-403, 22-3112.1. *Craig v. United States*, 523 A.2d 567, 1987 D.C. App. LEXIS 324 (1987).

There was no fatal variance between information charging defendant with defacing doors of elevator in private building by drawing, marking and writing sign or figure thereon and proof which showed that defendant, who did not ask for any further particulars, put stickers on door. D.C. Code 1951, § 22-3112. *Patler v. District of Columbia*, 171 A.2d 508, 1961 D.C. App. LEXIS 236 (Cr.App. 1961).

Prosecution of offenders.

United States Attorney for District of Columbia rather than corporation counsel for District

was the attorney who should prosecute offense of destroying private property in violation of the District of Columbia Code, where the offense was punishable by fine not to exceed \$100, or imprisonment not to exceed six months, or both. D.C. Code 1961, §§ 22-3112, 23-101. *District of Columbia v. Moody*, 304 F.2d 943, 1962 U.S. App. LEXIS 4733 (C.A.D.C. 1962).

Where question as to proper prosecuting authority as between District of Columbia Corporation Counsel and United States Attorney is raised, the court must certify question to Court of Appeals for District of Columbia, and Municipal Court of Appeals was required to reverse action of Municipal Court in dismissing informations brought by Corporation Counsel after ruling that United States Attorney was proper prosecuting authority and the court would remand with instructions to reinstate informations and to certify questions to Court of Appeals. D.C. Code 1951, §§ 22-109, 22-3112, 23-101. *District of Columbia v. Moody*, 175 A.2d 782, 1961 D.C. App. LEXIS 290 (Cr.App. 1961).

Questions of law and fact.

In prosecution for destroying private property, evidence upon the question as to whether complainant was holder of legal title or had right of possession when the offense was committed was sufficient for the jury. D.C. Code 1951, § 22-3112. *Sims v. U.S.*, 120 A.2d 69, 1956 D.C. App. LEXIS 174 (Cr.App. 1956).

Weight and sufficiency of evidence.

Demonstrator could not show any realistic danger that District of Columbia statute prohibiting defacement of public and private property chilled constitutionally protected speech, as required to invalidate statute as overbroad in his challenge to statute after he was prohibited from demonstrating using sidewalk chalk in front of White House; demonstrator cited no prior example of enforcement of statute, as would deter others, and District sponsored and invited citizens to come and chalk in various locations throughout the city, even closing off a street annually for students to chalk. *Mahoney v. Doe*, 642 F.3d 1112, 2011 U.S. App. LEXIS 12478 (C.A.D.C. 2011).

Evidence supported conviction of destroying private property. D.C. Code 1951, § 22-3112. *Sims v. U.S.*, 120 A.2d 69, 1956 D.C. App. LEXIS 174 (Cr.App. 1956).

§ 22-3312.02. Defacing or burning cross or religious symbol; display of certain emblems.

(a) It shall be unlawful for any person to burn, desecrate, mar, deface, or damage a religious or secular symbol on any private premises or property in

the District of Columbia primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons of a particular race, color, creed, religion, or any other category listed in § 2-1401.01, or on any public property in the District of Columbia; or to place or to display in any of these locations a sign, mark, symbol, emblem, or other physical impression including, but not limited to, a Nazi swastika, a noose, or any manner of exhibit which includes a burning cross, real or simulated, where it is probable that a reasonable person would perceive that the intent is:

(1) To deprive any person or class of persons of equal protection of the law or of equal privileges and immunities under the law, or for the purpose of preventing or hindering the constituted authorities of the United States or the District of Columbia from giving or securing to all persons within the District of Columbia equal protection of the law;

(2) To injure, intimidate, or interfere with any person because of his or her exercise of any right secured by federal or District of Columbia laws, or to intimidate any person or any class of persons from exercising any right secured by federal or District of Columbia laws;

(3) To threaten another person whereby the threat is a serious expression of an intent to inflict harm; or

(4) To cause another person to fear for his or her personal safety, or where it is probable that reasonable persons will be put in fear for their personal safety by the defendant's actions, with reckless disregard for that probability.

(b) Repealed.

(c) Nothing in this section shall be deemed to amend or repeal any provision of the District of Columbia Fire Prevention Code (7 DCCR).

(Mar. 10, 1983, D.C. Law 4-203, § 3, 30 DCR 180; May 15, 2009, D.C. Law 17-390, § 2, 55 DCR 11030.)

Section references. — This section is referred to in § 22-3312.04.

Prior Codifications. — 1981 Ed., § 22-3112.2.

Effect of amendments. — D.C. Law 17-390 rewrote the lead-in language and par. (3) of subsec. (a) and repealed subsec. (b).

Legislative history of Law 4-203. — For legislative history of D.C. Law 4-203, see Historical and Statutory Notes following § 22-3312.01.

Legislative history of Law 17-390. — Law 17-390, the "Title 22 Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-627 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on July 15, 2008, and September 16, 2008, respectively. Signed by the Mayor on October 1, 2009, it was assigned Act No. 17-524 and transmitted to both Houses of Congress for its review. D.C. Law 17-390 became effective on May 15, 2009.

§ 22-3312.03. Wearing hoods or masks.

(a) No person or persons over 16 years of age, while wearing any mask, hood, or device whereby any portion of the face is hidden, concealed, or covered as to conceal the identity of the wearer, shall:

(1) Enter upon, be, or appear upon any lane, walk, alley, street, road highway, or other public way in the District of Columbia;

(2) Enter upon, be, or appear upon or within the public property of the District of Columbia; or

(3) Hold any manner of meeting or demonstration.

(b) The provisions of subsection (a) of this section apply only if the person was wearing the hood, mask, or other device:

(1) With the intent to deprive any person or class of persons of equal protection of the law or of equal privileges and immunities under the law, or for the purpose of preventing or hindering the constituted authorities of the United States or the District of Columbia from giving or securing for all persons within the District of Columbia equal protection of the law;

(2) With the intent, by force or threat of force, to injure, intimidate, or interfere with any person because of his or her exercise of any right secured by federal or District of Columbia laws, or to intimidate any person or any class of persons from exercising any right secured by federal or District of Columbia laws;

(3) With the intent to intimidate, threaten, abuse, or harass any other person;

(4) With the intent to cause another person to fear for his or her personal safety, or, where it is probable that reasonable persons will be put in fear for their personal safety by the defendant's actions, with reckless disregard for that probability; or

(5) While engaged in conduct prohibited by civil or criminal law, with the intent of avoiding identification.

(Mar. 10, 1983, D.C. Law 4-203, § 4, 30 DCR 180.)

Section references. — This section is referred to in § 22-3312.04.

Prior Codifications. — 1981 Ed., § 22-3112.3.

Legislative history of Law 4-203. — For legislative history of D.C. Law 4-203, see Historical and Statutory Notes following § 22-3312.01.

§ 22-3312.03a. Abatement of graffiti. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-203, § 4a, as added June 12, 2001, D.C. Law 13-309, § 2(b), 48 DCR 1613; June 5, 2003, D.C. Law 14-307, § 2302, 49 DCR 11664; Sept. 18, 2010, D.C. Law 18-219, § 13(b)(1), 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 2302 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2302 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 2302 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) repeal of section, see § 13(b)(1) of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 13-309. — Law 13-309, the "Anti-Graffiti Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-306, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-560 and transmitted to both Houses of Congress for its review. D.C. Law 13-309 became effective on June 12, 2001.

Legislative history of Law 14-307. — Law 14-307, the "Fiscal Year 2003 Budget Support Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December

4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 18-219. — Law 18-219, the “Anti-Graffiti Act of 2010”, was introduced in Council and assigned Bill No. 18-69, which was referred to the Committee on Public Safety and the Judiciary and the Com-

mittee on Public Works and Transportation. The Bill was adopted on first and second readings on March 2, 2010, and April 20, 2010, respectively. Signed by the Mayor on May 7, 2010, it was assigned Act No. 18-396 and transmitted to both Houses of Congress for its review. D.C. Law 18-219 became effective on September 18, 2010.

§ 22-3312.03b. Collection against owner. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-203, § 4b, as added June 12, 2001, D.C. Law 13-309, § 2(c), 48 DCR 1613; Sept. 18, 2010, D.C. Law 18-219, § 13(b)(2), 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 13(b)(2) of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 13-309. — For Law 13-309, see notes following § 22-3312.03a.

Legislative history of Law 18-219. — For Law 18-219, see notes following § 22-3312.03a.

§ 22-3312.04. Penalties.

(a) Any person who violates any provision of § 22-3312.01 shall be fined not less than \$250 or more than \$1,000, or imprisoned for a period not to exceed 180 days, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of § 22-3312.01, pursuant to Chapter 8 of Title 8.

(b) Any person who violates any provision of § 22-3312.02 or § 22-3312.03 shall be guilty of a misdemeanor punishable by a fine not to exceed \$500, or imprisonment not to exceed 180 days, or both.

(c) In addition to the penalties provided in subsection (a) of this section, a person convicted of violating any provision of § 22-3312.01 may be required to perform community service as provided in § 16-712.

(d) Any person who willfully places graffiti on property without the consent of the owner shall be subject to the sanctions in subsection (a) of this section.

(e) Any person who willfully possesses graffiti material with the intent to place graffiti on property without the consent of the owner shall be fined not less than \$100 or more than \$1,000.

(f) In addition to any fine or sentence imposed under this section, the court shall order the person convicted to make restitution to the owner of the property, or to the party responsible for the property upon which the graffiti has been placed, for the damage or loss caused, directly or indirectly, by the graffiti, in a reasonable amount and manner as determined by the court.

(g) The District of Columbia courts shall find parents or guardians civilly liable for all fines imposed or payments for abatement required if the minor cannot pay within a reasonable period of time established by the court.

(Mar. 10, 1983, D.C. Law 4-203, § 5, 30 DCR 180; June 12, 2001, D.C. Law 13-309, § 2(d), 48 DCR 1613.)

Prior Codifications. — 1981 Ed., § 22-3112.4.

Effect of amendments. — D.C. Law 13-309 rewrote the section which had read:

“(a) Any person who violates any provision of § 22-3312.01 shall be fined not less than \$250 or more than \$5,000, or imprisoned for a period not to exceed 1 year, or both.

“(b) Any person who violates any provision of § 22-3312.02 or § 22-3312.03 shall be guilty of

a misdemeanor punishable by a fine not to exceed \$500, or imprisonment not to exceed 1 year, or both.”

Legislative history of Law 4-203. — For legislative history of D.C. Law 4-203, see Historical and Statutory Notes following § 22-3312.01.

Legislative history of Law 13-309. — For Law 13-309, see notes following § 22-3312.03a.

CASE NOTES

ANALYSIS

Due process of law.

Indictment and information.

Due process of law.

Transfer of case from District of Columbia court to federal court where more severe penalties could be imposed did not deprive defendants of due process absent evidence that government was attempting to coerce defendants into pleading guilty in local court, thereby foregoing their right to a jury trial. U.S.C. Const.Amends. 5, 6. *United States v. Frankel*,

739 F. Supp. 629, 1990 U.S. Dist. LEXIS 6788 (1990).

Indictment and information.

Maximum fine for defacing property was greater than maximum fine for malicious destruction of property and, therefore, since their maximum prison term was same, defacing property was not lesser included offense of malicious destruction of property; accordingly, defendant, who was indicted for malicious destruction of property, could not be convicted of defacing property. D.C. Code 1981, §§ 22-403, 22-3112.1. *Craig v. United States*, 523 A.2d 567, 1987 D.C. App. LEXIS 324 (1987).

§ 22-3312.05. Definitions.

For the purposes of §§ 22-3312.01 through 22-3312.05, the term:

(1) “Abate” means to effectively remove.

(2) Repealed.

(3) Repealed.

(4) “Graffiti” means an inscription, writing, drawing, marking, or design that is painted, sprayed, etched, scratched, or otherwise placed on structures, buildings, dwellings, statues, monuments, fences, vehicles, or other similar materials that are on public or private property without the consent of the owner, manager, or agent in charge of the property, and the graffiti is visible from a public right-of-way.

(5) “Graffiti material” means any aerosol can, bottle, spray device or other mechanism designed to dispense paint or a similar substance under pressure, indelible marker, paint stick, adhesive label, and engraving device capable of leaving a visible mark on a natural or man-made surface.

(6) “Minor” means a person less than 18 years of age.

(7) Repealed.

(8) Repealed.

(9) “Public or private property” shall include any building, bridge, fence or other structure, any street, alley, sidewalk, or other vehicular or pedestrian right-of-way, any article of street furniture, lamppost, bus shelter, newspaper box, or trash receptacle, any tree, rock, or other natural fixture, any utility or public service equipment, or any other personal property located outdoors, whether publicly or privately owned.

(10) “Sign” means a name, identification, description, display, or illustra-

tion which is affixed to, or represented directly or indirectly upon a building, structure, or piece of land and which directs attention to an object, product, place, activity, person, institution, organization, or business.

(Mar. 10, 1983, D.C. Law 4-203, § 1a, as added June 12, 2001, D.C. Law 13-309, § 2(a), 48 DCR 1613; Sept. 18, 2010, D.C. Law 18-219, § 13(b)(3), 57 DCR 4353.)

Effect of amendments. — D.C. Law 18-219 repealed pars. (2), (3), (7), and (8).

Emergency legislation. — For temporary (90 day) amendment of section, see § 13(b)(3) of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 13-309. — For Law 13-309, see notes following § 22-3312.03a.

Legislative history of Law 18-219. — For Law 18-219, see notes following § 22-3312.03a.

§ 22-3313. Destroying or defacing building material for streets.

It shall not be lawful for any person or persons to destroy, break, cut, disfigure, deface, burn, or otherwise injure any building materials, or materials intended for the improvement of any street, avenue, alley, foot pavement, roads, highways, or inclosure, whether public or private property, or remove the same (except in pursuance of law or by consent of the owner) from the place where the same may be collected for purposes of building or improvement as aforesaid; or to remove, cut, destroy, or injure any scaffolding, ladder, or other thing used in or about such building or improvement, under a penalty of not more than \$25 for each and every such offense.

(July 29, 1892, 27 Stat. 322, ch. 320, § 2.)

Cross references. — Conduct of prosecutions under this section, see § 22-1809.

1973 Ed., § 22-3113.

Prior Codifications. — 1981 Ed., § 22-3113.

§ 22-3314. Destroying cemetery railing or tomb.

If any person shall maliciously cut down, demolish, or otherwise injure any railing, fence, or inclosure around or upon any cemetery, or shall injure or deface any tomb or inscription thereon, such person shall be fined not more than \$100.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 850; May 21, 1994, D.C. Law 10-119, § 2(v), 41 DCR 1639.)

Cross references. — Burning of cross or other religious symbol, see § 22-3312.02.

1973 Ed., § 22-3114.

Defacement of public or private building or property, see § 22-3312.01.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3309.

Wearing of masks for particular purposes, see § 22-3312.03.

Prior Codifications. — 1981 Ed., § 22-3114.

§§ 22-3315 to 22-3317. Offenses against property of electric lighting, heating, or power companies; tapping gas pipes; tapping or injuring water pipes; tampering with water meters [Repealed].

Repealed.

(Dec. 1, 1982, D.C. Law 4-164, § 602(pp)-(rr), 29 DCR 3976.)

Prior Codifications. — 1981 Ed., §§ 22-3115 to 22-3117. legislative history of D.C. Law 4-164, see Historical and Statutory Notes following § 22-

Legislative history of Law 4-164. — For 3306.

§ 22-3318. Malicious pollution of water.

Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the City of Washington, becomes impure, filthy, or unfit for use, shall be fined not less than \$500 nor more than \$1,000, or imprisoned at hard labor not more than 3 years nor less than 1 year.

(R.S., § 1806; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

Prior Codifications. — 1981 Ed., § 22-3118. 1973 Ed., § 22-3118.

§ 22-3319. Placing obstructions on or displacement of railway tracks.

Whoever maliciously places an obstruction on or near the track of any steam or street railway, or displaces or injures anything appertaining to such track, with intent to endanger the passage of any locomotive or car, shall be imprisoned for not more than 10 years.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 846.)

Prior Codifications. — 1981 Ed., § 22-3119. 1973 Ed., § 22-3119.

§ 22-3320. Obstructing public road; removing milestones.

If any person shall alter or in any manner obstruct or encroach on a public road, or cut, destroy, deface, or remove any milestones set up on such road, or place any rubbish, dirt, logs, or make any pit or hole therein, such person may be indicted, and, upon conviction thereof before the proper court, shall be fined or imprisoned, in the discretion of the court, according to the nature of the offense.

(R.S., D.C., § 268.)

Prior Codifications. — 1981 Ed., § 22-3120. 1973 Ed., § 22-3120.

§ 22-3321. Obstructing public highway.

Any person who, without lawful authority, shall obstruct the free use of any of the public highways, which had been used and recognized as public county roads for 25 years prior to May 3, 1862, and which were thereafter duly surveyed, recorded, and declared public highways according to law, shall be subject to a fine for each offense of not less than \$100 nor more than \$250 and be imprisoned till the fine and the costs of suit and collection of the same are paid.

(R.S., D.C., § 269.)

Section references. — This section is referred to in § 22-3322. 1973 Ed., § 22-3121.

Prior Codifications. — 1981 Ed., § 22-3121.

§ 22-3322. Fines under § 22-3321 to be collected in name of United States.

The fines provided for in § 22-3321 shall be collected in the name of the United States.

(R.S., D.C., §§ 1, 2, 96, 270; June 11, 1878, 20 Stat. 102, ch. 180.)

Prior Codifications. — 1981 Ed., § 22-3122. 1973 Ed., § 22-3122.

CHAPTER 34. USE OF "DISTRICT OF COLUMBIA" BY CERTAIN PERSONS.

Sec.	Sec.
22-3401. Use of "District of Columbia" or similar designation by private detective or collection agency — Prohibited.	22-3403. Use of "District of Columbia" or similar designation by private detective or collection agency — Prosecutions for violations.
22-3402. Use of "District of Columbia" or similar designation by private detec-	tive or collection agency — Penalty.

§ 22-3401. Use of "District of Columbia" or similar designation by private detective or collection agency — Prohibited.

No person engaged in the business of collecting or aiding in the collection of private debts or obligations, or engaged in furnishing private police, investigation, or other private detective services, shall use as part of the name of such business, or employ in any communication, correspondence, notice, advertisement, circular, or other writing or publication, the words "District of Columbia", "District", the initials "D.C.", or any emblem or insignia utilizing any of the said terms as part of its design, in such manner as reasonably to convey the impression or belief that such business is a department, agency, bureau, or instrumentality of the municipal government of the District of Columbia or in any manner represents the District of Columbia. As used in this section and § 22-3402, the word "person" means and includes individuals, associations, partnerships, and corporations.

(Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 1.)

Section references. — This section is referred to in §§ 22-3402 and 22-3403. 1973 Ed., § 22-3423.

Prior Codifications. — 1981 Ed., § 22-3423.

§ 22-3402. Use of "District of Columbia" or similar designation by private detective or collection agency — Penalty.

Any person who violates § 22-3401 shall be punished by a fine of not more than \$300 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

(Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 2.)

Section references. — This section is referred to in § 22-3401. 1973 Ed., § 22-3424.

Prior Codifications. — 1981 Ed., § 22-3424.

§ 22-3403. Use of “District of Columbia” or similar designation by private detective or collection agency — Prosecutions for violations.

All prosecutions for violations of § 22-3401 shall be conducted in the name of the District of Columbia by the Corporation Counsel or any Assistant Corporation Counsel. As used in this section the term “Corporation Counsel” means the Attorney for the District of Columbia, by whatever title such attorney may be known, designated by the Mayor of the District of Columbia to perform the functions prescribed for the Corporation Counsel in this section.

(Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 3; May 21, 1994, D.C. Law 10-119, § 18, 41 DCR 1639.)

Prior Codifications. — 1981 Ed., § 22-3425.

1973 Ed., § 22-3425.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-2903.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 35. VAGRANCY [REPEALED].

Sec.

22-3501 to 22-3506. [Repealed].

§ 22-3501. “Vagrancy” defined; prosecution and the giving of security. [Repealed].

Repealed.

(Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5.)

Prior Codifications. — 1981 Ed., § 22-3301.

§ 22-3502. “Vagrants” defined. [Repealed].

Repealed.

(Dec. 17, 1941, 55 Stat. 808, ch. 589, § 1; June 29, 1953, 67 Stat. 97, ch. 159, § 209(b); Nov. 17, 1993, D.C. Law 10-54, § 9, 40 DCR 5450; May 21, 1994, D.C. Law 10-119, § 16(a), 41 DCR 1639; May 17, 1996, D.C. Law 11-119, § 5, 43 DCR 528; June 3, 1997, D.C. Law 11-275, § 9(a), 44 DCR 1408; Dec. 10, 2009, D.C. Law 18-88, § 216, 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 22-3302.

1973 Ed., § 22-3302.

Emergency legislation. — For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 10-54. — Law 10-54, the “Panhandling Control Act of 1993,” was introduced in Council and assigned Bill No. 10-72, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-48 and transmitted to both Houses of Congress for its review. D.C. Law 10-54 became effective on November 17, 1993.

Legislative history of Law 10-119. — Law 10-119, the “Anti-Gender Discriminatory Language Criminal Offenses Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-332, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February

1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-209 and transmitted to both Houses of Congress for its review. D.C. Law 10-119 became effective on May 21, 1994.

Legislative history of Law 11-119. — Law 11-119, the “Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-484, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-198 and transmitted to both Houses of Congress for its review. D.C. Law 11-119 became effective May 17, 1996.

Legislative history of Law 11-275. — Law 11-275, the “Second Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

§ 22-3503. Prosecutions; burden of proof to show lawful employment. [Repealed].

Repealed.

(Dec. 17, 1941, 55 Stat. 809, ch. 589, § 2; May 21, 1994, D.C. Law 10-119, § 16(b), 41 DCR 1639; Dec. 10, 2009, D.C. Law 18-88, § 216, 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 22-3303.

1973 Ed., § 22-3303.

Emergency legislation. — For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Congressio-

nal Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3502.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

§ 22-3504. Penalty; conditions imposed by court. [Repealed].

Repealed.

(Dec. 17, 1941, 55 Stat. 809, ch. 589, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Dec. 10, 2009, D.C. Law 18-88, § 216, 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 22-3304.

1973 Ed., § 22-3304.

Emergency legislation. — For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For Law 18-88, see notes following § 22-402.

§ 22-3505. Prosecutions. [Repealed].

Repealed.

(Dec. 17, 1941, 55 Stat. 810, ch. 589, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); May 21, 1994, D.C. Law 10-119, § 16(c), 41 DCR 1639; Dec. 10, 2009, D.C. Law 18-88, § 216, 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 22-3305.

1973 Ed., § 22-3305.

Emergency legislation. — For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Congressio-

nal Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3502.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

§ 22-3506. Right to strike or picket not abrogated. [Repealed].

Repealed.

(Dec. 17, 1941, 55 Stat. 810, ch. 589, § 6; June 3, 1997, D.C. Law 11-275, § 9(b), 44 DCR 1408; Dec. 10, 2009, D.C. Law 18-88, § 216, 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 22-3306.

1973 Ed., § 22-3306.

Emergency legislation. — For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) repeal, see § 216 of Omnibus Public Safety and Justice Congressio-

nal Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 11-275. — For legislative history of D.C. Law 11-275, see Historical and Statutory Notes following § 22-3502.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

CHAPTER 35A. VOYEURISM.

Sec.

22-3531. Voyeurism.

§ 22-3531. Voyeurism.

(a) For the purposes of this section, the term:

(1) "Electronic device" means any electronic, mechanical, or digital equipment that captures visual or aural images, including cameras, computers, tape recorders, video recorders, and cellular telephones.

(2) "Private area" means the naked or undergarment-clad genitals, pubic area, anus, or buttocks, or female breast below the top of the areola.

(b) Except as provided in subsection (e) of this section, it is unlawful for any person to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or surreptitiously observing an individual who is:

- (1) Using a bathroom or rest room;
- (2) Totally or partially undressed or changing clothes; or
- (3) Engaging in sexual activity.

(c)(1) Except as provided in subsection (e) of this section, it is unlawful for a person to electronically record, without the express and informed consent of the individual being recorded, an individual who is:

- (A) Using a bathroom or rest room;
- (B) Totally or partially undressed or changing clothes; or
- (C) Engaging in sexual activity.

(2) Express and informed consent is only required when the individual engaged in these activities has a reasonable expectation of privacy.

(d) Except as provided in subsection (e) of this section, it is unlawful for a person to intentionally capture an image of a private area of an individual, under circumstances in which the individual has a reasonable expectation of privacy, without the individual's express and informed consent.

(e) This section does not prohibit the following:

(1) Any lawful law enforcement, correctional, or intelligence observation or surveillance;

(2) Security monitoring in one's own home;

(3) Security monitoring in any building where there are signs prominently displayed informing persons that the entire premises or designated portions of the premises are under surveillance; or

(4) Any electronic recording of a medical procedure which is conducted under circumstances where the patient is unable to give consent.

(f)(1) A person who violates subsection (b), (c), or (d) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both.

(2) A person who distributes or disseminates, or attempts to distribute or disseminate, directly or indirectly, by any means, a photograph, film, video-tape, audiotape, compact disc, digital video disc, or any other image or series of images or sounds or series of sounds that the person knows or has reason to

know were taken in violation of subsection (b), (c), or (d) of this section is guilty of a felony and, upon conviction, shall be fined not more than \$5,000 or imprisoned for not more than 5 years, or both.

(g) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute a violation of subsection (b), (c), or (d) of this section for which the penalty is set forth in subsection (f)(1) of this section.

(Apr. 24, 2007, D.C. Law 16-306, § 105, 53 DCR 8610.)

Emergency legislation. — For temporary (90 day) addition, see § 105 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) addition, see § 105 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) addition, see § 105 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) addition, see § 105 of Omnibus Public Safety Second Congressional

Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 16-306. — Law 16-306, the “Omnibus Public Safety Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

SUBTITLE II. ENHANCED PENALTIES.

CHAPTER 36. CRIMES COMMITTED AGAINST CERTAIN PERSONS.

Sec.

22-3601. Enhanced penalty for crimes committed against senior citizen victims.

22-3602. Enhanced penalty for committing cer-

tain dangerous and violent crimes against a citizen patrol member.

§ 22-3601. Enhanced penalty for crimes committed against senior citizen victims.

(a) Any person who commits any offense listed in subsection (b) of this section against an individual who is 60 years of age or older, at the time of the offense, may be punished by a fine of up to 1½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1½ times the maximum term of imprisonment otherwise authorized for the offense, or both.

(b) The provisions of subsection (a) of this section shall apply to the following offenses: Abduction, arson, aggravated assault, assault with a dangerous weapon, assault with intent to kill, commit first degree sexual abuse, or commit second degree sexual abuse, assault with intent to commit any other offense, burglary, carjacking, armed carjacking, extortion or blackmail accompanied by threats of violence, kidnapping, malicious disfigurement, manslaughter, mayhem, murder, robbery, sexual abuse in the first, second, and third degrees, theft, fraud in the first degree, and fraud in the second degree, or an attempt or conspiracy to commit any of the foregoing offenses.

(c) It is an affirmative defense that the accused knew or reasonably believed the victim was not 60 years old or older at the time of the offense, or could not have known or determined the age of the victim because of the manner in which the offense was committed. This defense shall be established by a preponderance of the evidence.

(Dec. 1, 1982, D.C. Law 4-164, § 201, 29 DCR 3976; Apr. 24, 2007, D.C. Law 16-306, § 220, 53 DCR 8610.)

Cross references. — Attempt to commit robbery, see § 22-2802.

Extortion, see § 22-3251.

Fraud, see § 22-3221.

Robbery, see § 22-2801.

Theft, see § 22-3211.

Prior Codifications. — 1981 Ed., § 22-3901.

Effect of amendments. — D.C. Law 16-306 rewrote subsecs. (b) and (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 220 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 220 of Omnibus Public Safety Con-

gressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 220 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 220 of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133,

which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982,

it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 22-3302.

CASE NOTES

ANALYSIS

Assistance of counsel.

Defenses.

Indictment and information.

Validity.

Weight and sufficiency of evidence.

Assistance of counsel.

Defense counsel's alleged failure to raise issue of "double enhancement," was not ineffective assistance, in prosecution for robbery of a senior citizen, given that defendant had five previous convictions for burglary. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

Defenses.

Trial court error in denying defendant opportunity to present affirmative defense under senior citizen enhancement penalty at time of sentencing was harmless, where nothing in record suggested that defendant's sentence would have differed had court found defendant reasonably believed victim was not 60 when he robbed her, and, at allocution, defendant had denied robbing victim and carrying knife with intent to do violent harm to anybody. D.C. Code 1981, § 22-3901. *Fields v. United States*, 547 A.2d 138, 1988 D.C. App. LEXIS 156 (1988).

Indictment and information.

Age of victim under senior citizen enhancement statute is element of offense which must

be alleged in indictment and is thus matter of proof at trial. D.C. Code 1981, § 22-3901. *Fields v. United States*, 547 A.2d 138, 1988 D.C. App. LEXIS 156 (1988).

Validity.

Senior citizen penalty enhancement statute does not violate due process. D.C. Code 1981, § 22-3901; U.S. Const. Amend. 5. *Fields v. United States*, 547 A.2d 138, 1988 D.C. App. LEXIS 156 (1988).

Weight and sufficiency of evidence.

Government failed to prove beyond reasonable doubt that defendants took wallets from immediate actual possession of victims, and therefore evidence was insufficient to convict defendants of robbery or robbery of senior citizen, where there was no direct evidence that defendants took wallets, and no expert testimony as to methods used by pickpockets to remove wallets from clothing of individuals, or amount of force necessary to pickpocket. D.C. Code 1981, §§ 22-2901, 22-3901(a). *Zanders v. United States*, 678 A.2d 556, 1996 D.C. App. LEXIS 122 (1996).

Evidence was insufficient to convict defendant of robbery of senior citizen; victim was pushed by two men, victim then discovered her wallet was gone, and defendant and another were arrested wearing clothes similar to those worn by perpetrators, but victim could not identify her assailants. D.C. Code 1981, §§ 22-2901, 22-3901. *Smith v. United States*, 561 A.2d 468, 1989 D.C. App. LEXIS 125 (1989), substituted opinion in part at 1989 D.C. App. LEXIS 218 (D.C. Oct. 11, 1989).

§ 22-3602. Enhanced penalty for committing certain dangerous and violent crimes against a citizen patrol member.

(a) For purposes of this section, the term "citizen patrol" means a group of residents of the District of Columbia organized for the purpose of providing additional security surveillance for certain District of Columbia neighborhoods with the goal of crime prevention. The term shall include, but is not limited to, Orange Hat Patrols, Red Hat Patrols, Blue Hat Patrols, or Neighborhood Watch Associations.

(b) Any person who commits any offense listed in subsection (c) of this section against a member of a citizen patrol ("member") while that member is participating in a citizen patrol, or because of the member's participation in a

citizen patrol, may be punished with a fine up to 1 ½ times the maximum fine otherwise authorized for the offense or may be imprisoned for a term of up to 1 ½ times the maximum term of imprisonment otherwise authorized for this offense, or both.

(c) The provisions of subsection (b) of this section shall apply to the following offenses: taking or attempting to take property from another by force or threat of force, forcible rape, or assault with intent to commit forcible rape, murder, mayhem, kidnapping, robbery, burglary, voluntary manslaughter, extortion or blackmail accompanied by threats of violence, assault with a deadly weapon, simple assault, aggravated assault, or a conspiracy to commit any of the foregoing offenses as defined by an Act of Congress or law of the District of Columbia if the offense is punishable by imprisonment for more than 1 year.

(Dec. 1, 1982, D.C. Law 4-164, § 202, as added Aug. 20, 1994, D.C. Law 10-151, § 401, 41 DCR 2608.)

Prior Codifications. — 1981 Ed., § 22-3902.

Emergency legislation. — For temporary addition of section, see § 401 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — Law 10-151, the “Omnibus Criminal Justice Reform Amendment Act of 1994,” was introduced in

Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

CHAPTER 36A. CRIMES COMMITTED AGAINST MINORS.

Sec.

22-3611. Enhanced penalty for committing
crime of violence against minors.

§ 22-3611. Enhanced penalty for committing crime of violence against minors.

(a) Any adult, being at least 2 years older than a minor, who commits a crime of violence against that minor may be punished by a fine of up to 1 ½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 ½ times the maximum term of imprisonment otherwise authorized for the offense, or both.

(b) It is an affirmative defense that the accused reasonably believed that the victim was not a minor at the time of the offense. This defense shall be established by a preponderance of the evidence.

(c) For the purposes of this section, the term:

(1) "Adult" means a person 18 years of age or older at the time of the offense.

(2) "Crime of violence" shall have the same meaning as provided in § 23-1331(4).

(3) "Minor" means a person under 18 years of age at the time of the offense.

(Apr. 24, 2007, D.C. Law 16-306, § 102, 53 DCR 8610.)

Emergency legislation. — For temporary (90 day) addition, see § 102 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) addition, see § 102 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) addition, see § 102 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) addition, see § 102 of Omnibus Public Safety Second Congressional

Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 16-306. — Law 16-306, the "Omnibus Public Safety Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

CHAPTER 37. BIAS-RELATED CRIME.

Sec.

22-3701. Definitions.

22-3702. Collection and publication of data.

Sec.

22-3703. Bias-related crime.

22-3704. Civil action.

§ 22-3701. Definitions.

For the purposes of this chapter, the term:

(1) “Bias-related crime” means a designated act that demonstrates an accused’s prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation of a victim of the subject designated act.

(2) “Designated act” means a criminal act, including arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry, and attempting, aiding, abetting, advising, inciting, conniving, or conspiring to commit arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry.

(3) “Gender identity or expression” shall have the same meaning as provided in § 2-1401.02(12A).

(4) “Homelessness” means:

(A) The status or circumstance of an individual who lacks a fixed, regular, and adequate nighttime residence; or

(B) The status or circumstance of an individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare motels, hotels, congregate shelters, and transitional housing for the mentally ill;

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(May 8, 1990, D.C. Law 8-121, § 2, 37 DCR 27; Apr. 24, 2007, D.C. Law 16-305, § 37(a), 53 DCR 6198; June 25, 2008, D.C. Law 17-177, § 12(a), 55 DCR 3696; Mar. 25, 2009, D.C. Law 17-353, § 236(a), 56 DCR 1117; Dec. 10, 2009, D.C. Law 18-88, § 217(a), 56 DCR 7413.)

Cross references. — Crime of violence defined, compensation of victims of violent crimes, see § 4-501.

Prior Codifications. — 1981 Ed., § 22-4001.

Effect of amendments. — D.C. Law 16-305, in par. (1), substituted “disability” for “handicap”.

D.C. Law 17-177, in par. (1), substituted “sexual orientation, gender identity or expression” for “sexual orientation”; and added par. (3).

D.C. Law 17-353 validated a previously made technical correction in par. (1).

D.C. Law 18-88, in par. (1), substituted “family responsibility, homelessness,” for “family responsibility,”; and added par. (4).

Emergency legislation. — For temporary (90 day) amendment of section, see § 217(a) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 217(a) of Omnibus Public Safety and

Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 8-121. — Law 8-121, the “Bias-Related Crime Act of 1989,” was introduced in Council and assigned Bill No. 8-168, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was as-

signed Act No. 8-130 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 22-3226.09.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 22-2104.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 22-3010.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

CASE NOTES

Validity.

Bias-related crimes statute, which enhanced penalty for enumerated “bias-related crimes,” was not unconstitutionally vague, as applied to defendant, who had allegedly assaulted victims and yelled homophobic insults at them, as the “designated act” underlying bias charge was assault, which was specifically enumerated in statute, there was nothing vague about what constituted an assault, for enhancement to apply, assault had to be based on the actual or perceived sexual orientation of the victims, and defendant’s animus against victims’ sexual orientation was evident. *Shepherd v. United States*, 905 A.2d 260, 2006 D.C. App. LEXIS 477 (2006).

Bias-related crimes statute, which enhanced penalty for enumerated “bias-related crimes,” did not violate First Amendment as applied to defendant, who had allegedly assaulted victims and yelled homophobic insults at them, as trial court implicitly applied statute as requiring a clear nexus between bias identified in statute and the assault, defendant generally admitted at trial that he accompanied his assaults on victims with an oral stream of homophobic insults, and, thus it was defendant’s assaultive conduct motivated by bias, not his homophobic prejudice as such, that was subject to criminal sanction. *Shepherd v. United States*, 905 A.2d 260, 2006 D.C. App. LEXIS 477 (2006).

§ 22-3702. Collection and publication of data.

(a) The Metropolitan Police force shall afford each crime victim the opportunity to submit with the complaint a written statement that contains information to support a claim that the designated act constitutes a bias-related crime.

(b) The Mayor shall collect and compile data on the incidence of bias-related crime.

(c) Data collected under subsection (b) of this section shall be used for research or statistical purposes and may not contain information that may reveal the identity of an individual crime victim.

(d) The Mayor shall publish an annual summary of the data collected under subsection (b) of this section and transmit the summary and recommendations based on the summary to the Council.

(May 8, 1990, D.C. Law 8-121, § 3, 37 DCR 27.)

Prior Codifications. — 1981 Ed., § 22-4002.

Legislative history of Law 8-121. — For

legislative history of D.C. Law 8-121, see Historical and Statutory Notes following § 22-3701.

§ 22-3703. Bias-related crime.

A person charged with and found guilty of a bias-related crime shall be fined not more than 1½ times the maximum fine authorized for the designated act

and imprisoned for not more than 1½ times the maximum term authorized for the designated act.

(May 8, 1990, D.C. Law 8-121, § 4, 37 DCR 27.)

Prior Codifications. — 1981 Ed., § 22-4003.

legislative history of D.C. Law 8-121, see Historical and Statutory Notes following § 22-3701.

Legislative history of Law 8-121. — For

CASE NOTES

In general.

Application to defendant of bias-related crimes statute, which enhanced penalty for an enumerated “bias-related crime,” on basis that defendant assaulted victims and yelled homophobic insults at them, was not plain error,

as defendant’s substantial rights were not affected, given that trial court did not enhance his sentence beyond that available for simple assault. *Shepherd v. United States*, 905 A.2d 260, 2006 D.C. App. LEXIS 477 (2006).

§ 22-3704. Civil action.

(a) Irrespective of any criminal prosecution or the result of a criminal prosecution, any person who incurs injury to his or her person or property as a result of an intentional act that demonstrates an accused’s prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, homelessness, physical disability, matriculation, or political affiliation of a victim of the subject designated act shall have a civil cause of action in a court of competent jurisdiction for appropriate relief, which includes:

- (1) An injunction;
- (2) Actual or nominal damages for economic or non-economic loss, including damages for emotional distress;
- (3) Punitive damages in an amount to be determined by a jury or a court sitting without a jury; or
- (4) Reasonable attorneys’ fees and costs.

(b) In a civil action pursuant to subsection (a) of this section, whether an intentional act has occurred that demonstrates an accused’s prejudice based on the actual or perceived color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, homelessness, physical disability, matriculation, or political affiliation of a victim of the subject designated act shall be determined by reliable, probative, and substantial evidence.

(c) The parent of a minor shall be liable for any damages that a minor is required to pay under subsection (a) of this section, if any action or omission of the parent or legal guardian contributed to the actions of the minor.

(May 8, 1990, D.C. Law 8-121, § 5, 37 DCR 27; Apr. 24, 2007, D.C. Law 16-305, § 37(b), 53 DCR 6198; June 25, 2008, D.C. Law 17-177, § 12(b), 55 DCR 3696; Dec. 10, 2009, D.C. Law 18-88, § 217(b), 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 22-4004.

Effect of amendments. — D.C. Law 16-305, in subsecs. (a) and (b), substituted “disability” for “handicap”.

D.C. Law 17-177, in subsec. (a), substituted “sexual orientation, gender identity or expression” for “sexual orientation”.

D.C. Law 18-88, in subsecs. (a) and (b), substituted “family responsibilities, homelessness,” for “family responsibilities,”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 217(b) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 217(b) of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 8-121. — For legislative history of D.C. Law 8-121, see Historical and Statutory Notes following § 22-3701.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 22-3226.09.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 22-2104.01.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

CHAPTER 37A. OFFENSES COMMITTED AGAINST TAXICAB DRIVERS AND CERTAIN TRANSIT WORKERS.

Sec.	Sec.
22-3751. Enhanced penalties for offenses committed against taxicab drivers.	tors and Metrorail station managers.
22-3751.01. Enhanced penalties for offenses committed against transit opera-	22-3752. Enumerated offenses.

§ 22-3751. Enhanced penalties for offenses committed against taxicab drivers.

Any person who commits an offense listed in § 22-3752 against a taxicab driver who, at the time of the offense, has a current license to operate a taxicab in the District of Columbia or any United States jurisdiction and is operating a taxicab in the District of Columbia may be punished by a fine of up to one and ½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to one and ½ times the maximum term of imprisonment otherwise authorized for the offense, or both.

(June 9, 2001, D.C. Law 13-307, § 2, 48 DCR 600; July 23, 2008, D.C. Law 17-206, § 2(a), 55 DCR 5168.)

Effect of amendments. — D.C. Law 17-206, in the section name line, inserted “for offenses committed against taxicab drivers”; and substituted “operating” for “lawfully operating”.

Legislative history of Law 13-307. — Law 13-307, the “Taxicab Drivers Protection Act of 2000”, was introduced in Council and assigned Bill No. 13-638, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-515 and transmitted to

both Houses of Congress for its review. D.C. Law 13-307 became effective on June 9, 2001.

Legislative history of Law 17-206. — Law 17-206, the “Transit Operator Protection and Enhanced Penalty Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-233 which was referred to Public Safety and Judiciary. The Bill was adopted on first and second readings on March 4, 2008, and April 1, 2008, respectively. Signed by the Mayor on April 14, 2008, it was assigned Act No. 17-338 and transmitted to both Houses of Congress for its review. D.C. Law 17-206 became effective on July 23, 2008.

§ 22-3751.01. Enhanced penalties for offenses committed against transit operators and Metrorail station managers.

(a) Any person who commits an offense enumerated in § 22-3752 against a transit operator, who, at the time of the offense, is authorized to operate and is operating a mass transit vehicle in the District of Columbia, or against Metrorail station manager while on duty in the District of Columbia, may be punished by a fine of up to one and ½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to one and ½ times the maximum term of imprisonment otherwise authorized by the offense, or both.

(b) For the purposes of this section, the term:

(1) “Mass transit vehicle” means any publicly or privately owned or operated commercial vehicle for the carriage of 6 or more passengers, including

any Metrobus, Metrorail, Metroaccess, or DC Circulator vehicle or other bus, trolley, or van operating within the District of Columbia.

(2) “Metrorail station manager” means any Washington Metropolitan Area Transit Authority employee who is assigned to supervise a Metrorail station from a kiosk at that station.

(3) “Transit operator” means a person who is licensed to operate a mass transit vehicle.

(June 9, 2001, D.C. Law 13-307, § 2a, as added July 23, 2008, D.C. Law 17-206, § 2(b), 55 DCR 5168.)

Legislative history of Law 17-206. — For Law 17-206, see notes following § 22-3751.

§ 22-3752. Enumerated offenses.

The provisions of §§ 22-3751 and 22-3751.01 shall apply to the following offenses or any attempt or conspiracy to commit any of the following offenses: murder, manslaughter, aggravated assault, assault with a dangerous weapon, mayhem or maliciously disfiguring, threats to do bodily harm, first degree sexual abuse, second degree sexual abuse, third degree sexual abuse, fourth degree sexual abuse, misdemeanor sexual abuse, robbery, carjacking, and kidnapping.

(June 9, 2001, D.C. Law 13-307, § 3, 48 DCR 600; July 23, 2008, D.C. Law 17-206, § 2(c), 55 DCR 5168.)

Effect of amendments. — D.C. Law 17-206 rewrote the section which had read as follows: “The provisions of § 22-3751 shall apply to the following offenses: taking property from another by force or by threat of force, murder, attempted murder, first degree sexual abuse, second degree sexual abuse, attempted rape,

carjacking, kidnapping, robbery, attempted robbery, assault with a dangerous weapon, and aggravated assault.”

Legislative history of Law 13-307. — For Law 13-307, see notes following § 22-3751.

Legislative history of Law 17-206. — For Law 17-206, see notes following § 22-3751.

SUBTITLE III. SEX OFFENDERS.

CHAPTER 38. SEXUAL PSYCHOPATHS.

Sec.

22-3801, 22-3802. [Repealed].

22-3803. Definitions.

22-3804. Filing of statement.

22-3805. Right to counsel.

22-3806. Examination by psychiatrists.

Sec.

22-3807. When hearing is required.

22-3808. Hearing; commitment.

22-3809. Parole; discharge.

22-3810. Stay of criminal proceedings.

22-3811. Criminal law unchanged.

§§ 22-3801, 22-3802. Indecent acts with children; sodomy
[Repealed].

Repealed.

(May 23, 1995, D.C. Law 10-257, § 501(b), 42 DCR 53.)

Cross references. — Furlough eligibility, convictions under this section, see § 24-251.02.

Prior Codifications. — 1981 Ed., §§ 22-3501, 22-3502.

Legislative history of Law 10-257. — Law 10-257, the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee

on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

§ 22-3803. Definitions.

For the purposes of this chapter:

(1) The term “sexual psychopath” means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his or her sexual impulses as to be dangerous to other persons because he or she is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his or her desire.

(2) The term “court” means a court in the District of Columbia having jurisdiction of criminal offenses or delinquent acts.

(3) The term “patient” means a person with respect to whom there has been filed with the clerk of any court a statement in writing setting forth facts tending to show that such person is a sexual psychopath.

(4) The term “criminal proceeding” means a proceeding in any court against a person for a criminal offense, and includes all stages of such a proceeding from the time the person is indicted, charged by an information, or charged with a delinquent act, to the entry of judgment, or, if the person is granted probation, the completion of the period of probation.

(June 9, 1948, 62 Stat. 347, ch. 428, title II, § 201; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 574, Pub. L. 91-358, title I, § 157(c)(1)(A), (B); May 21, 1994, D.C. Law 10-119, § 20(a), 41 DCR 1639.)

Section references. — This section is referred to in §§ 22-3805 to 22-3807 and 22-3809 to 22-3811.

Prior Codifications. — 1981 Ed., § 22-3503.

1973 Ed., § 22-3503.

Legislative history of Law 10-119. — Law 10-119, the "Anti-Gender Discriminatory Language Criminal Offenses Amendment Act of

1994," was introduced in Council and assigned Bill No. 10-332, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-209 and transmitted to both Houses of Congress for its review. D.C. Law 10-119 became effective on May 21, 1994.

CASE NOTES

ANALYSIS

Construction with other laws.
Good time prison credits.
Habeas corpus relief.
Judicial precedent.
Nature of proceeding under act.
Sexual psychopath.
Validity.

Construction with other laws.

Under Sexual Psychopath Act, term "not insane" must be read to mean "not mentally ill" within meaning of new civil commitment statute, and the Sexual Psychopath Act applies only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by the 1964 Civil Commitment Act. D.C. Code §§ 21-501 to 21-591, 22-3503 to 22-3511. *Cross v. Harris*, 418 F.2d 1095, 1969 U.S. App. LEXIS 12791 (C.A.D.C. 1969).

The District of Columbia Sexual Psychopath Act was not repealed by the 1964 Hospitalization of Mentally Ill Act. D.C. Code §§ 21-501 to 21-591, 22-3503(1). *Millard v. Harris*, 406 F.2d 964, 1968 U.S. App. LEXIS 4951 (C.A.D.C. 1968).

The protection of the District of Columbia Hospitalization of the Mentally Ill Act is limited to those declared insane or of unsound mind pursuant to court order and does not include any person previously committed under the Sexual Psychopath Act. D.C. Code §§ 21-501 to 21-591, 22-3503. *Millard v. Harris*, 406 F.2d 964, 1968 U.S. App. LEXIS 4951 (C.A.D.C. 1968).

Good time prison credits.

Defendant was "in custody as a result of the offense" under Good Time Credits Act, when defendant was committed to mental hospital under Sexual Psychopath Act (SPA) prior to sentencing for sex offenses, and thus, defendant was entitled to credit against sentence. D.C. Code 1981, §§ 22-3503 to 22-3511, 24-431(a). *Shelton v. United States*, 721 A.2d 603, 1998 D.C. App. LEXIS 239 (1998).

Habeas corpus relief.

Inasmuch as habeas corpus petitioner committed to hospital in 1958 as a sexual psycho-

path had been discharged, mental condition of petitioner at time of his 1967 bid for release was no longer an issue in the case. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a). *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Claim that there was insufficient evidence of course of repeated misconduct in sexual matters to justify 1958 commitment as sexual psychopath was not cognizable in habeas corpus proceeding in view of petitioner's failure to appeal from the 1958 commitment hearing. D.C. Code § 22-3503(1). *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Where petitioner was in custody in hospital pursuant to commitment as sexual psychopath when he filed his habeas corpus petition, federal habeas corpus court did not lose jurisdiction to decide legality of commitments when the hospital thereafter unconditionally released petitioner. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a); Code Va.1950, § 54-446.4. *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Inasmuch as habeas corpus petitioner would continue to suffer adverse consequences as result of commitment under the Sexual Psychopath Act, issue of validity of the commitment was not moot even though petitioner had been released. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a); Const.Va. § 23; Code Va.1950, § 24.1-42; Const.Md. art. 1, § 2. *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Claims of habeas corpus petitioner that he was being given inadequate medical treatment at hospital to which he had been committed as a sexual psychopath and that he was being confined in an improper place were rendered moot by his discharge. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a). *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Since examining doctors concluded that person committed under Sexual Psychopath Act was not insane but doctors had no occasion to consider whether he was nonetheless mentally ill, there was no record on question and habeas corpus petition must be remanded for hearing

and findings of fact necessary to determine whether statute was properly applied to petitioner. D.C. Code §§ 21-501 to 21-591, 22-3503 to 22-3511. *Cross v. Harris*, 418 F.2d 1095, 1969 U.S. App. LEXIS 12791 (C.A.D.C. 1969).

Habeas corpus relief would be available to one involuntarily committed to public hospital as sexual psychopath but who is not receiving reasonably suitable and adequate treatment, and lack of such treatment could not be justified by lack of staff or facilities. D.C. Code 1961, §§ 21-562, 22-3503 to 22-3511, 22-3504, 22-3506, 22-3509. *Millard v. Cameron*, 373 F.2d 468, 1966 U.S. App. LEXIS 4767 (C.A.D.C. 1966).

Habeas corpus petitioner, who was under hospital commitment as a sexual psychopath, was not entitled to release on ground that he was not mentally ill, as psychiatric testimony established that petitioner was still a sexual psychopath who was likely to be of danger to others if permitted to return to society. D.C. Code § 22-3503(1). *Clatterbuck v. Harris*, 295 F. Supp. 84, 1968 U.S. Dist. LEXIS 9696 (D.D.C.1968).

One committed as a sexual psychopath to hospital for the insane may at any time after commitment test by habeas corpus proceeding the question of whether he has recovered. D.C. Code 1940, §§ 22-3501 et seq., 22-3503(1). *Malone v. Overholzer*, 93 F.Supp. 647, 1950 U.S. Dist. LEXIS 2380 (D.D.C.1950).

Judicial precedent.

Judicial decision rendered in 1968 interpreting words "not insane" as used in Sexual Psychopath Act as meaning "not mentally ill" should have been used by court in ruling on petitioner's 1967 bid for release from hospital to which he had been committed as a sexual psychopath. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a). *Justin v. Jacobs*, 449 F.2d

1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Nature of proceeding under act.

Proceedings under statute, to determine whether defendant in pending criminal action is sexual psychopath, is a civil one. D.C. Code 1951, §§ 22-3501 et seq., 22-3503(1). *Miller v. Overholzer*, 206 F.2d 415, 1953 U.S. App. LEXIS 2763 (C.A.D.C. 1953).

Sexual psychopath.

Nature of crime of sodomy, with which accused was charged, was not sufficient alone, to require the District Court, before accepting guilty plea, to order a mental examination of accused, although court could properly consider nature of crime in that connection, and where there was no indication by prosecuting attorney that accused might be a sexual psychopath, and no request for a mental examination was made by prosecution or accused, convictions could not be set aside in collateral proceeding, such as *coram nobis*, because of court's failure to order examination on its own motion. D.C. Code 1951, §§ 22-3503(1), 22-3504 et seq., 24-301; 18 U.S.C. § 2255. *Carter v. U.S.*, 283 F.2d 200, 1960 U.S. App. LEXIS 3704 (C.A.D.C. 1960).

Validity.

Standards provided for release of sexual psychopath from hospital are not so vague as to invalidate Sexual Psychopath Act. D.C. Code 1951, §§ 22-3501 et seq., 22-3503(1). *Miller v. Overholzer*, 206 F.2d 415, 1953 U.S. App. LEXIS 2763 (C.A.D.C. 1953).

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. D.C. Code 1940, §§ 22-3501 et seq., 22-3503(1). *Malone v. Overholzer*, 93 F.Supp. 647, 1950 U.S. Dist. LEXIS 2380 (D.D.C.1950).

§ 22-3804. Filing of statement.

(a) Whenever it shall appear to the United States Attorney for the District of Columbia that any person within the District of Columbia, other than a defendant in a criminal proceeding, is a sexual psychopath, such Attorney may file with the clerk of the Superior Court of the District of Columbia a statement in writing setting forth the facts tending to show that such a person is a sexual psychopath.

(b) Whenever it shall appear to the United States Attorney for the District of Columbia that any defendant in any criminal proceeding prosecuted by such Attorney or any Assistant United States Attorney is a sexual psychopath, such Attorney may file with the clerk of the court in which such proceeding is pending a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(c) Whenever it shall appear to any court that any defendant in any criminal

proceeding pending in such court is a sexual psychopath, the court may, if it deems such procedure advisable, direct the officer prosecuting the defendant to file with the clerk of such court a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(d) Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of this section may be filed only:

- (1) Before trial;
- (2) After conviction or plea of guilty but before sentencing; or
- (3) After conviction or plea of guilty but before the completion of probation.

(e) This section shall not apply to an individual in a criminal proceeding who is charged with first degree sexual abuse, second degree sexual abuse, or assault with intent to commit first or second degree sexual abuse.

(June 9, 1948, 62 Stat. 348, ch. 428, title II, § 202; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 574, Pub. L. 91-358, title I, § 157(c) (2); May 21, 1994, D.C. Law 10-119, § 20(b), 41 DCR 1639; May 23, 1995, D.C. Law 10-257, § 401(d), 42 DCR 53.)

Section references. — This section is referred to in §§ 22-3803, 22-3805 to 22-3807 and 22-3809 to 22-3811.

Prior Codifications. — 1981 Ed., § 22-3504.

1973 Ed., § 22-3504.

Legislative history of Law 10-119. — For

legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3803.

Legislative history of Law 10-257. — For legislative history of D.C. Law 10-257, see Historical and Statutory Notes following § 22-3801.

CASE NOTES

ANALYSIS

In general.

Review.

In general.

Under Sexual Psychopath Act, term “not insane” must be read to mean “not mentally ill” within meaning of new civil commitment statute, and the Sexual Psychopath Act applies only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by the 1964 Civil Commitment Act. D.C. Code §§ 21-501 to 21-591, 22-3503 to 22-3511. *Cross v. Harris*, 418 F.2d 1095, 1969 U.S. App. LEXIS 12791 (C.A.D.C. 1969).

The community is not without means of protecting itself if at time that a prisoner’s sentence ends he is found to be a sexual psychopath, or to be insane or mentally incompetent. D.C. Code 1951, §§ 21-310, 21-311, 21-326, 22-3504(a); 18 U.S.C. § 4247. *Carter v. U.S.*, 283 F.2d 200, 1960 U.S. App. LEXIS 3704 (C.A.D.C. 1960).

The existence of possibilities to protect society from, and to treat, prisoner convicted of sodomy, or other sexual crimes, in the event he is found to be a sexual psychopath, or insane, of

unsound mind or otherwise defective during imprisonment or at time his sentence ends, does not relieve bench and bar of responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual’s mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. 18 U.S.C. §§ 4241, 4247; D.C. Code 1951, §§ 21-310, 21-311, 21-326, 22-3504(a), 24-301, 24-302. *Carter v. U.S.*, 283 F.2d 200, 1960 U.S. App. LEXIS 3704 (C.A.D.C. 1960).

Review.

Where Chief of Legal Psychiatric Division expressed opinion raising doubt of competency for criminal sentencing for allegedly sexually violating the person of a child five years of age, so as to call for a hearing under the Sexual Psychopath Act, trial judge erred in proceeding to sentence for criminal offense, and Court of Appeals would remand for competency hearing. D.C. Code §§ 22-3501, 22-3504. *Fuller v. United States*, 390 F.2d 468, 1967 U.S. App. LEXIS 4174 (C.A.D.C. 1967).

Nature of crime of sodomy, with which accused was charged, was not sufficient alone, to

require the District Court, before accepting guilty plea, to order a mental examination of accused, although court could properly consider nature of crime in that connection, and where there was no indication by prosecuting attorney that accused might be a sexual psychopath, and no request for a mental examination was made

by prosecution or accused, convictions could not be set aside in collateral proceeding, such as coram nobis, because of court's failure to order examination on its own motion. D.C. Code 1951, §§ 22-3503(1), 22-3504 et seq., 24-301; 18 U.S.C. § 2255. *Carter v. U.S.*, 283 F.2d 200, 1960 U.S. App. LEXIS 3704 (C.A.D.C. 1960).

§ 22-3805. Right to counsel.

A patient shall have the right to have the assistance of counsel at every stage of the proceeding under this chapter. Before the court appoints psychiatrists pursuant to § 22-3806 it shall advise the patient of his or her right to counsel and shall assign counsel to represent him or her unless the patient is able to obtain counsel or elects to proceed without counsel.

(June 9, 1948, 62 Stat. 348, ch. 428, title II, § 203; May 21, 1994, D.C. Law 10-119, § 20(c), 41 DCR 1639.)

Section references. — This section is referred to in §§ 22-3803, 22-3806, 22-3807, and 22-3809 to 22-3811.

Prior Codifications. — 1981 Ed., § 22-3505.

1973 Ed., § 22-3505.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3803.

§ 22-3806. Examination by psychiatrists.

(a) When a statement has been filed with the clerk of any court pursuant to § 22-3804, such court shall appoint 2 qualified psychiatrists to make a personal examination of the patient. The patient shall be required to answer questions asked by the psychiatrists under penalty of contempt of court. Each psychiatrist shall file a written report of the examination, which shall include a statement of his or her conclusion as to whether the patient is a sexual psychopath.

(b) The counsel for the patient shall have the right to inspect the reports of the examination of the patient. No such report and no evidence resulting from the personal examination of the patient shall be admissible against him or her in any judicial proceeding except a proceeding under this chapter to determine whether the patient is a sexual psychopath.

(June 9, 1948, 62 Stat. 348, ch. 428, title II, § 204; May 21, 1994, D.C. Law 10-119, § 20(d), 41 DCR 1639.)

Section references. — This section is referred to in §§ 22-3803, 22-3805, and 22-3807 to 22-3811.

Prior Codifications. — 1981 Ed., § 22-3506.

1973 Ed., § 22-3506.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3803.

CASE NOTES

ANALYSIS

In general.
Necessity for examination.

Review.

In general.
The existence of possibilities to protect soci-

ety from, and to treat, prisoner convicted of sodomy, or other sexual crimes, in the event he is found to be a sexual psychopath, or insane, of unsound mind or otherwise defective during imprisonment or at time his sentence ends, does not relieve bench and bar of responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. 18 U.S.C. §§ 4241, 4247; D.C. Code 1951, §§ 21-310, 21-311, 21-326, 22-3504(a), 24-301, 24-302. *Carter v. U.S.*, 283 F.2d 200, 1960 U.S. App. LEXIS 3704 (C.A.D.C. 1960).

Necessity for examination.

Nature of crime of sodomy, with which accused was charged, was not sufficient alone, to require the District Court, before accepting guilty plea, to order a mental examination of accused, although court could properly consider

nature of crime in that connection, and where there was no indication by prosecuting attorney that accused might be a sexual psychopath, and no request for a mental examination was made by prosecution or accused, convictions could not be set aside in collateral proceeding, such as *coram nobis*, because of court's failure to order examination on its own motion. D.C. Code 1951, §§ 22-3503(1), 22-3504 et seq., 24-301; 18 U.S.C. § 2255. *Carter v. U.S.*, 283 F.2d 200, 1960 U.S. App. LEXIS 3704 (C.A.D.C. 1960).

Review.

Since examining doctors concluded that person committed under Sexual Psychopath Act was not insane but doctors had no occasion to consider whether he was nonetheless mentally ill, there was no record on question and habeas corpus petition must be remanded for hearing and findings of fact necessary to determine whether statute was properly applied to petitioner. D.C. Code §§ 21-501 to 21-591, 22-3503 to 22-3511. *Cross v. Harris*, 418 F.2d 1095, 1969 U.S. App. LEXIS 12791 (C.A.D.C. 1969).

§ 22-3807. When hearing is required.

If, in their reports filed pursuant to § 22-3806, both psychiatrists state that the patient is a sexual psychopath, or if both state that they are unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, or if one states that the patient is a sexual psychopath and the other states that he or she is unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, then the court shall conduct a hearing in the manner provided in § 22-3808 to determine whether the patient is a sexual psychopath. If, on the basis of the reports filed, the court is not required to conduct such a hearing, the court shall enter an order dismissing the proceeding under this chapter determine whether the patient is a sexual psychopath.

(June 9, 1948, 62 Stat. 349, ch. 428, title II, § 205; May 21, 1994, D.C. Law 10-119, § 20(e), 41 DCR 1639.)

Section references. — This section is referred to in §§ 22-3803, 22-3805, 22-3806 and 22-3809 to 22-3811.

Prior Codifications. — 1981 Ed., § 22-3507.

1973 Ed., § 22-3507.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3803.

§ 22-3808. Hearing; commitment.

Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexual psychopath. Such hearing shall be conducted without a jury unless, before such hearing and within 15 days after the date on which the second report is filed pursuant to § 22-3806, a jury is demanded by the patient or by the officer filing the statement. The rules of evidence applicable in judicial proceedings in the court

shall be applicable to hearings pursuant to this section; but, notwithstanding any such rule, evidence of conviction of any number of crimes the commission of which tends to show that the patient is a sexual psychopath and of the punishment inflicted therefor shall be admissible at any such hearing. The patient shall be entitled to an appeal as in other cases. If the patient is determined to be a sexual psychopath, the court shall commit him or her to an institution to be confined there until released in accordance with § 22-3809.

(June 9, 1948, 62 Stat. 349, ch. 428, title II, § 206; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(t)(1); May 21, 1994, D.C. Law 10-119, § 20(f), 41 DCR 1639.)

Section references. — This section is referred to in §§ 22-3803, 22-3805 to 22-3807 and 22-3809 to 22-3811.

Prior Codifications. — 1981 Ed., § 22-3508.

1973 Ed., § 22-3508.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3803.

CASE NOTES

ANALYSIS

Construction and application.

Good time credits.

Habeas corpus.

Necessity for hearing.

Validity.

Construction and application.

Under Sexual Psychopath Act, term “not insane” must be read to mean “not mentally ill” within meaning of new civil commitment statute, and the Sexual Psychopath Act applies only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by the 1964 Civil Commitment Act. D.C. Code §§ 21-501 to 21-591, 22-3503 to 22-3511. *Cross v. Harris*, 418 F.2d 1095, 1969 U.S. App. LEXIS 12791 (C.A.D.C. 1969).

Good time credits.

Defendant was “in custody as a result of the offense” under Good Time Credits Act, when defendant was committed to mental hospital under Sexual Psychopath Act (SPA) prior to sentencing for sex offenses, and thus, defendant was entitled to credit against sentence. D.C. Code 1981, §§ 22-3503 to 22-3511, 24-431(a). *Shelton v. United States*, 721 A.2d 603, 1998 D.C. App. LEXIS 239 (1998).

Habeas corpus.

Habeas corpus relief would be available to one involuntarily committed to public hospital as sexual psychopath but who is not receiving reasonably suitable and adequate treatment, and lack of such treatment could not be justified by lack of staff or facilities. D.C. Code 1961, §§ 21-562, 22-3503 to 22-3511, 22-3504, 22-

3506, 22-3509. *Millard v. Cameron*, 373 F.2d 468, 1966 U.S. App. LEXIS 4767 (C.A.D.C. 1966).

Question as to whether Sexual Psychopath Act provision requiring stay of criminal proceedings pending recovery of defendant adjudged to be sexual psychopath was repugnant to Sixth Amendment guaranty of speedy trial was not before court in habeas corpus proceeding brought by defendant committed to hospital as sexual psychopath, since proceeding could test only legality of his present confinement, as a sexual psychopath, and not legality of delay in his trial on criminal charges. D.C. Code 1951, § 22-3508; U.S. Const. Amend. 6. *Miller v. Overholser*, 206 F.2d 415, 1953 U.S. App. LEXIS 2763 (C.A.D.C. 1953).

Habeas corpus relief is available to one confined as a sexual psychopath, without treatment, in a ward for the hopelessly insane; a court must order the hospital to transfer the patient to a proper place in the institution for treatment. *Clatterbuck v. Harris*, 295 F. Supp. 84, 1968 U.S. Dist. LEXIS 9696 (D.D.C.1968).

Habeas corpus petitioner, who was under hospital commitment as a sexual psychopath, was not entitled to release on ground that he was not mentally ill, as psychiatric testimony established that petitioner was still a sexual psychopath who was likely to be of danger to others if permitted to return to society. D.C. Code § 22-3503(1). *Clatterbuck v. Harris*, 295 F. Supp. 84, 1968 U.S. Dist. LEXIS 9696 (D.D.C.1968).

One committed as a sexual psychopath to hospital for the insane may at any time after commitment test by habeas corpus proceeding the question of whether he has recovered. D.C.

Code 1940, §§ 22-3501 et seq., 22-3503(1). *Malone v. Overholzer*, 93 F.Supp. 647, 1950 U.S. Dist. LEXIS 2380 (D.D.C.1950).

Necessity for hearing.

Where court, after defendant's conviction and prior to sentencing, requested and received a psychiatric report showing defendant to be competent to engage in the pending proceedings, to which report defendant did not object, failure to hold hearing on defendant's competency was not an abuse of discretion. D.C. Code

§ 24-301(a). *Hughes v. United States*, 308 A.2d 238, 1973 D.C. App. LEXIS 331 (1973).

Validity.

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. D.C. Code 1940, §§ 22-3501 et seq., 22-3503(1). *Malone v. Overholzer*, 93 F.Supp. 647, 1950 U.S. Dist. LEXIS 2380 (D.D.C.1950).

§ 22-3809. Parole; discharge.

Any person committed under this chapter may be released from confinement when an appropriate supervisory official finds that he or she has sufficiently recovered so as to not be dangerous to other persons, provided if the person to be released be one charged with crime or undergoing sentence therefor, that official shall give notice thereof to the judge of the criminal court and deliver him or her to the court in obedience to proper precept.

(June 9, 1948, 62 Stat. 349, ch. 428, title II, § 207; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(t)(2); May 21, 1994, D.C. Law 10-119, § 20(g), 41 DCR 1639.)

Cross references. — Sex offenders, persons required to register, see § 24-4102.

Section references. — This section is referred to in §§ 22-3803, 22-3805 to 22-3808, 22-3810 and 22-3811.

Prior Codifications. — 1981 Ed., § 22-3509.

1973 Ed., § 22-3509.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-3803.

CASE NOTES

ANALYSIS

Habeas corpus.
Validity.

Habeas corpus.

Habeas corpus relief would be available to one involuntarily committed to public hospital as sexual psychopath but who is not receiving reasonably suitable and adequate treatment, and lack of such treatment could not be justified by lack of staff or facilities. D.C. Code 1961, §§ 21-562, 22-3503 to 22-3511, 22-3504, 22-3506, 22-3509. *Millard v. Cameron*, 373 F.2d 468, 1966 U.S. App. LEXIS 4767 (C.A.D.C. 1966).

Habeas corpus would be available to test hospital superintendent's refusal to recognize recovery of sexual psychopath. *Miller v. Overholser*, 206 F.2d 415, 1953 U.S. App. LEXIS 2763 (C.A.D.C. 1953).

Ordinarily habeas corpus is a remedy to secure total release from custody, and if court finds petition for writ well founded, ordinarily

it orders release of petitioner. *Miller v. Overholser*, 206 F.2d 415, 1953 U.S. App. LEXIS 2763 (C.A.D.C. 1953).

The writ of habeas corpus is available to test validity not only of fact of confinement but also of place of confinement. *Miller v. Overholser*, 206 F.2d 415, 1953 U.S. App. LEXIS 2763 (C.A.D.C. 1953).

Where habeas corpus petition, brought by one adjudged to be sexual psychopath but not of unsound mind, alleged that prisoner had been confined with the criminally insane and that he had been assaulted by mentally deranged persons, District Court would be required to make finding as to conditions of petitioner's confinement, and if it found such conditions to be substantially in accord with the petitioner's allegations but deemed continued confinement required, would be required to issue order directing hospital authorities to transfer petitioner to proper place in that institution for treatment. *Miller v. Overholser*, 206 F.2d 415, 1953 U.S. App. LEXIS 2763 (C.A.D.C. 1953).

One committed as a sexual psychopath to hospital for the insane may at any time after commitment test by habeas corpus proceeding the question of whether he has recovered. D.C. Code 1940, §§ 22-3501 et seq., 22-3503(1). *Malone v. Overholzer*, 93 F.Supp. 647, 1950 U.S. Dist. LEXIS 2380 (D.D.C.1950).

Validity.

Standards provided for release of sexual psychopath from hospital are not so vague as to invalidate Sexual Psychopath Act. D.C. Code

1951, §§ 22-3501 et seq., 22-3503(1). *Miller v. Overholzer*, 206 F.2d 415, 1953 U.S. App. LEXIS 2763 (C.A.D.C. 1953).

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. D.C. Code 1940, §§ 22-3501 et seq., 22-3503(1). *Malone v. Overholzer*, 93 F.Supp. 647, 1950 U.S. Dist. LEXIS 2380 (D.D.C.1950).

§ 22-3810. Stay of criminal proceedings.

Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of § 22-3804 shall stay such criminal proceeding until whichever of the following first occurs:

(1) The proceeding under this chapter to determine whether the patient is a sexual psychopath is dismissed pursuant to § 22-3807 or withdrawn;

(2) It is determined pursuant to § 22-3808 that the patient is not a sexual psychopath; or

(3) The patient is discharged from an institution pursuant to § 22-3809.

(June 9, 1948, 62 Stat. 349, ch. 428, title II, § 208; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(t)(3).)

Section references. — This section is referred to in §§ 22-3803, 22-3805 to 22-3807, 22-3809 and 22-3811.

Prior Codifications. — 1981 Ed., § 22-3510.

1973 Ed., § 22-3510.

§ 22-3811. Criminal law unchanged.

Nothing in this chapter shall alter in any respect the tests of mental capacity applied in criminal prosecutions under the laws of the District of Columbia.

(June 9, 1948, 62 Stat. 350, ch. 428, title II, § 209; June 3, 1997, D.C. Law 11-275, § 10, 44 DCR 1408.)

Cross references. — Unemployment compensation, eligibility, see § 51-109.

Section references. — This section is referred to in §§ 22-3803, 22-3805 to 22-3807, 22-3809 and 22-3810.

Prior Codifications. — 1981 Ed., § 22-3511.

1973 Ed., § 22-3511.

Legislative history of Law 11-275. — Law 11-275, the “Second Criminal Code Technical

Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

CASE NOTES

In general.

Judicial decision rendered in 1968 interpreting words “not insane” as used in Sexual Psychopath Act as meaning “not mentally ill”

should have been used by court in ruling on petitioner’s 1967 bid for release from hospital to which he had been committed as a sexual psychopath. D.C. Code §§ 22-3501(a), 22-3503

to 22-3511, 24-301(a). *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Under Sexual Psychopath Act, term “not insane” must be read to mean “not mentally ill” within meaning of new civil commitment statute, and the Sexual Psychopath Act applies only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by the 1964 Civil Commitment Act. D.C. Code §§ 21-501 to 21-591, 22-

3503 to 22-3511. *Cross v. Harris*, 418 F.2d 1095, 1969 U.S. App. LEXIS 12791 (C.A.D.C. 1969).

Defendant was “in custody as a result of the offense” under Good Time Credits Act, when defendant was committed to mental hospital under Sexual Psychopath Act (SPA) prior to sentencing for sex offenses, and thus, defendant was entitled to credit against sentence. D.C. Code 1981, §§ 22-3503 to 22-3511, 24-431(a). *Shelton v. United States*, 721 A.2d 603, 1998 D.C. App. LEXIS 239 (1998).

CHAPTER 39. HIV TESTING OF CERTAIN CRIMINAL OFFENDERS.

Sec.

22-3901. Definitions.

22-3902. Testing and counseling.

Sec.

22-3903. Rules.

§ 22-3901. Definitions.

For the purposes of this chapter, the term:

(1) "Convicted" means having received a verdict, or a finding, of guilt in a criminal proceeding, adjudicated as being delinquent in a juvenile proceeding, or having entered a plea of guilty or nolo contendere.

(2) "HIV test" means blood testing for the human immunodeficiency virus ("HIV") or any other identified causative agent of the acquired immune deficiency syndrome ("AIDS").

(3) "Mayor" means the Mayor of the District of Columbia, or his or her designee.

(4) "Offense" means any prohibited activity involving a sexual act that includes contact between the penis and the vulva or the penis and the anus, however slight, or contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

(5) "Victim" means a person injured by the commission of an offense, and includes the parent or legal guardian of the victim, if the victim is a minor, or the spouse, domestic partner, or child of a victim, if the victim is deceased or incapacitated.

(Nov. 11, 1995, D.C. Law 11-74, § 2, 42 DCR 3624; Apr. 24, 2007, D.C. Law 16-306, § 222, 53 DCR 8610.)

Section references. — This section is referred to in § 22-3902.

Prior Codifications. — 1981 Ed., § 24-491.

Effect of amendments. — D.C. Law 16-306 rewrote par. (5), which read as follows: "(5) 'Victim' means a person injured by the commission of an offense, and includes the parent or legal guardian of a victim, if the victim is a minor, or the spouse or child of a victim, if the victim is deceased or incapacitated."

Emergency legislation. — For temporary addition of subchapter, see §§ 2 to 4 of the HIV Testing of Certain Criminal Offenders Emergency Act of 1995 (D.C. Act 11-87, July 6, 1995, 42 DCR 3617).

For temporary (90 day) amendment of section, see § 222 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 222 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 222 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 222 of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 11-74. — Law 11-74, the "HIV Testing of Certain Criminal Offenders Act of 1995," was introduced in Council and assigned Bill No. 11-166, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 6, 1995, it was assigned Act No. 11-89 and transmitted to both Houses of Congress for its review. D.C. Law 11-74 became effective on November 11, 1995.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 22-3302.

§ 22-3902. Testing and counseling.

(a) Upon the request of a victim, the court shall order any individual convicted of an offense, as defined by § 22-3901, to furnish a blood sample to be tested for the presence of HIV.

(b) The court shall promptly notify the Mayor of any court order for an HIV test. Upon receipt of a court order for an HIV test, the Mayor shall promptly collect a blood sample from the convicted individual and conduct an HIV test on the blood sample.

(c) After conducting the HIV test, the Mayor shall promptly notify the victim and the convicted individual of the results of the HIV test. The Mayor shall not disclose the results of the HIV test without also providing, offering, or arranging for appropriate counselling and referral for appropriate health care and support services to the victim and the convicted individual.

(d) The victim may disclose the results of the HIV test to any other individual to protect the health and safety of the victim, the victim's sexual partners, or the victim's family.

(e) The result of any HIV test conducted under this section shall not be admissible as evidence of guilt or innocence in any criminal proceeding.

(Nov. 11, 1995, D.C. Law 11-74, § 3, 42 DCR 3624.)

Prior Codifications. — 1981 Ed., § 24-492.

Emergency legislation. — For temporary addition of subchapter, see §§ 2 to 4 of the HIV Testing of Certain Criminal Offenders Emergency Act of 1995 (D.C. Act 11-87, July 6, 1995, 42 DCR 3617).

Legislative history of Law 11-74. — For legislative history of D.C. Law 11-74, see Historical and Statutory Notes following § 22-3901.

§ 22-3903. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement this chapter.

(b) The rules shall include provisions regarding notification to the victim of his or her right to request an HIV test, confidentiality of the test results, free counselling for the victim and the convicted individual concerning HIV testing and HIV disease, and referral for appropriate health care and supportive services.

(Nov. 11, 1995, D.C. Law 11-74, § 4, 42 DCR 3624.)

Prior Codifications. — 1981 Ed., § 24-493.

Emergency legislation. — For temporary addition of subchapter, see §§ 2 to 4 of the HIV Testing of Certain Criminal Offenders Emergency Act of 1995 (D.C. Act 11-87, July 6, 1995, 42 DCR 3617).

Legislative history of Law 11-74. — For legislative history of D.C. Law 11-74, see Historical and Statutory Notes following § 22-3901.

CHAPTER 40. SEX OFFENDER REGISTRATION.

Sec.	Sec.
22-4001. Definitions.	22-4010. Maintenance and release of sex offender registration information by the Court Services and Offender Supervision Agency.
22-4002. Registration period.	22-4011. Community notification and education duties of the Metropolitan Police Department.
22-4003. Certification duties of the Superior Court.	22-4012. Interagency coordination.
22-4004. Dispute resolution procedures in the Superior Court.	22-4013. Immunity.
22-4005. Duties of the Department of Corrections.	22-4014. Duties of sex offenders.
22-4006. Duties of the Department of Mental Health.	22-4015. Penalties; mandatory release condition.
22-4007. Registration functions of the Court Services and Offender Supervision Agency.	22-4016. No change in age of consent; registration not required for offenses between consenting adults.
22-4008. Verification functions of the Court Services and Offender Supervision Agency.	22-4017. Freedom of Information Act exception.
22-4009. Change of address or other information.	

§ 22-4001. Definitions.

For the purposes of this chapter, the term:

(1) "Agency" means the Court Services and Offender Supervision Agency for the District of Columbia, established pursuant to § 24-133 or, until that agency assumes its duties, the Trustee appointed under § 24-132(a).

(2) "Attends school" means being enrolled on a full-time or part-time basis in any type of public or private educational institution.

(3)(A) "Committed a registration offense" means:

(i) Was convicted or found not guilty by reason of insanity of a registration offense; or

(ii) Was determined to be a sexual psychopath under §§ 22-3803 through 22-3811.

(B) A person is not deemed to have committed a registration offense for purposes of this chapter, if the disposition described in subparagraph (A) of this paragraph has been reversed or vacated, or if the person has been pardoned for the offense on the ground of innocence.

(4) "Court" means the Superior Court of the District of Columbia.

(5) "In custody or under supervision" means:

(A) Detained, incarcerated, confined, hospitalized, civilly committed, on probation, on parole, on supervised release, or on conditional release because of:

(i) Being convicted of or found not guilty by reason of insanity of an offense under the District of Columbia Official Code; or

(ii) A sexual psychopath determination under §§ 22-3803 through 22-3811; or

(B) In any comparable status under the jurisdiction of the District of Columbia pursuant to subchapter II of Chapter 4 of Title 24, Chapter 10 of Title 24, or any other transfer agreement between the District of Columbia and another jurisdiction.

(6) "Lifetime registration offense" means:

(A) First or second degree sexual abuse as proscribed by § 22-3002 or § 22-3003; forcible rape as this offense was proscribed until May 23, 1995 by § 22-4801 [repealed]; or sodomy as this offense was proscribed until May 23, 1995 by § 22-3802(a) where the offense was forcible;

(B) First degree child sexual abuse as proscribed by § 22-3008 committed against a person under the age of 12 years, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by § 22-4801 [repealed] committed against a person under the age of 12 years, or sodomy as this offense was proscribed until May 23, 1995 by § 22-3802(a) committed against a person under the age of 12 years;

(C) Murder or manslaughter as proscribed by § 22-2101 committed before, during or after engaging in or attempting to engage in a sexual act or sexual contact, or rape as this offense was proscribed until May 23, 1995 by § 22-4801 [repealed];

(D) An attempt or conspiracy to commit an offense as proscribed by § 22-1803 or § 22-1805a or § 22-3018 or assault with intent to commit rape, carnal knowledge, statutory rape, first degree sexual abuse, second degree sexual abuse, or child sexual abuse, as proscribed by § 22-401, which involved an attempt, conspiracy or assault with intent to commit an offense described in subparagraphs (A) through (C) of this paragraph; and

(E) An offense under the law of any state, under federal law, or under the law of any other jurisdiction, which involved conduct that would constitute an offense described in subparagraphs (A) through (D) of this paragraph if committed in the District of Columbia or prosecuted under the District of Columbia Official Code, or conduct which is substantially similar to that described in subparagraphs (A) through (D) of this paragraph.

(7) "Minor" means a person under 18 years of age.

(8) "Registration offense" means:

(A) An offense under Chapter 30 of this title;

(B) Forcible rape, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by § 22-4801 [repealed]; indecent acts with children as this offense was proscribed until May 23, 1995 by § 22-3801(a); enticing a child as this offense was proscribed until May 23, 1995 by § 22-3801(b); or sodomy as this offense was proscribed until May 23, 1995 by § 22-3802(a) where the offense was forcible or committed against a minor;

(C) Any of the following offenses where the victim is a minor: acts proscribed by § 22-1312 (lewd, indecent, or obscene acts), acts proscribed by § 22-2201 (obscenity), acts proscribed by § 22-3102 (sexual performances using minors), acts proscribed by § 22-1901 (incest), acts proscribed by § 22-2001 (kidnapping), and acts proscribed by §§ 22-2701, 22-2701.01, 22-2703, 22-2704, 22-2705 to 22-2712, 22-2713 to 22-2720, 22-2722 and 22-2723 (prostitution; pandering);

(D) Any offense under the District of Columbia Official Code that involved a sexual act or sexual contact without consent or with a minor, assaulting or threatening another with the intent to engage in a sexual act or sexual contact or with the intent to commit rape, or causing the death of

another in the course of, before, or after engaging or attempting to engage in a sexual act or sexual contact or rape;

(E) An attempt or a conspiracy to commit a crime, as proscribed by § 22-1803 or § 22-1805a which involved an attempt or conspiracy to commit an offense described in subparagraphs (A) through (D) of this paragraph, or assault with intent to commit rape, carnal knowledge, statutory rape, first degree sexual abuse, second degree sexual abuse, or child sexual abuse, as proscribed by § 22-401;

(F) Assault with intent to commit any other crime, as proscribed by § 22-403, or kidnapping or burglary, as proscribed by § 22-801 or § 22-2001 where the offense involved an intent, attempt or conspiracy to commit an offense described in subparagraphs (A) through (D) of this paragraph;

(G) An offense under the law of any state, under federal law, or under the law of any other jurisdiction, which involved conduct that would constitute an offense described in subparagraphs (A) through (F) of this paragraph if committed in the District of Columbia or prosecuted under the District of Columbia Official Code, or conduct which is substantially similar to that described in subparagraphs (A) through (F) of this paragraph; and

(H) Any other offense where the offender agrees in a plea agreement to be subject to sex offender registration requirements.

(9) "Sex offender" means a person who lives, resides, works, or attends school in the District of Columbia, and who:

(A) Committed a registration offense on or after July 11, 2000;

(B) Committed a registration offense at any time and is in custody or under supervision on or after July 11, 2000;

(C) Was required to register under the law of the District of Columbia on the day before July 11, 2000; or

(D) Committed a registration offense at any time in another jurisdiction and, within the registration period, enters the District of Columbia to live, reside, work or attend school.

(10) "Sexual act" has the meaning stated in § 22-3001(8).

(11) "Sexual contact" has the meaning stated in § 22-3001(9).

(12) "State" means a state of the United States, or any territory, commonwealth, or possession of the United States.

(13) "Works" means engaging in any type of full-time or part-time employment or occupation, whether paid or unpaid, for a period of time exceeding 14 calendar days or for an aggregate period of time exceeding 30 days during any calendar year.

(July 11, 2000, D.C. Law 13-137, § 2, 47 DCR 797; Apr. 24, 2007, D.C. Law 16-306, § 221, 53 DCR 8610.)

Effect of amendments. — D.C. Law 16-306, in par. (8)(C), inserted ", 22-2701.01, 22-2704, 22-2705 to 22-2712, 22-2713 to 22-2720, and 22-2722" preceding "(prostitution; pandering)".

Temporary Addition of Section. — Sections 2 to 17 of D.C. Law 13-110, the Sex Offender Registration Temporary Act of 1999

(46 DCR 8944), added provisions now found in §§ 22-4001 to 22-4016. Section 219(b) of D.C. Law 13-110 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Sex Offender Registration Act of 1999, whichever occurs first.

Emergency legislation. — For temporary (90-day) addition of provisions now found in

§§ 22-4001 to 22-4016, see §§ 2 to 17 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771); see §§ 2 to 17 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244); see §§ 1 to 17 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487); see §§ 1 to 17 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

For temporary (90 day) amendment of section, see § 221 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 221 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 221 of Omnibus Public Safety Congressional Review Emergency Amendment Act

of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 221 of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 13-137. — Law 13-137, the “Sex Offender Registration Act of 1999,” was introduced in Council and assigned Bill No. 13-350, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 10, 2000, it was assigned Act No. 13-248 and transmitted to both Houses of Congress for its review. D.C. Law 13-137 became effective on July 11, 2000.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 22-3302.

Delegation of Authority. — Delegation of authority under D.C. Act 13-133, the “Sex Offender Registration Emergency Act of 1999,” see Mayor’s Order 99-178, November 9, 1999 (46 DCR 9357).

CASE NOTES

ANALYSIS

Construction and application.

Dismissal.

Ex post facto.

In custody or under supervision.

Registration offense.

Standing.

Validity.

Construction and application.

Council of the District of Columbia intended to create a regulatory scheme that was civil and nonpunitive in enacting Sex Offender Registration Act (SORA), for purposes of determining whether application of SORA to parolee who was convicted of sex offenses prior to SORA’s enactment violated the Ex Post Facto Clause; Council drafted SORA to confirm to federal law encouraging states to require sex offender registration, work of SORA was assigned to an administrative agency, and SORA lacked procedural safeguards normally associated with criminal punishment. *Anderson v. Holder*, 647 F.3d 1165, 2011 U.S. App. LEXIS 16856 (C.A.D.C. 2011).

Provision of District of Columbia Sex Offender Registration Act (SORA) requiring in-person registration imposed no additional burden on parolee, and therefore, parolee lacked an injury fairly traceable to requirement, as required for standing to challenge provision as violating Ex Post Facto Clause for being enacted after he had been convicted of sex offenses; condition of parolee’s parole was that he

meet with an officer in person. *Anderson v. Holder*, 647 F.3d 1165, 2011 U.S. App. LEXIS 16856 (C.A.D.C. 2011).

District of Columbia’s Sex Offender and Registration Act (SORA) did not apply to offenders sentenced under District of Columbia Youth Rehabilitation Act (YRA) for offenses committed before effective date of amendment of YRA, who had their convictions set aside; a youth offender whose conviction had been set aside under the YRA and whose offense predated effective date of amendment continued to enjoy a liberty interest in maintaining the benefits of his set-aside. *Doe #1 v. Williams*, 167 F.Supp.2d 45, 2001 U.S. Dist. LEXIS 21699 (2001), reversed in part by, dismissed in part by 2003 U.S. App. LEXIS 12570 (D.C. Cir. June 19, 2003).

The Sex Offender Registration Act (SORA) imposes registration requirements on sex offenders based on the nature of the offenses they committed rather than on an individualized assessment of their risk of recidivism. *In re Doe* (‘s.D.’), 855 A.2d 1100 (2004).

As the Sex Offender Registration Act (SORA) is a remedial regulatory enactment and not a penal law, it should be liberally construed for the benefit of the class it is intended to protect. *In re Doe* (‘s.D.’), 855 A.2d 1100 (2004).

Habeas petitioner waived appellate review of his claim that retroactive application of sex offender registration law to persons who, like him, committed their crimes before law was enacted would violate Double Jeopardy Clause

of Fifth Amendment and Ex Post Facto Clause of Constitution; petitioner failed to present that claim to trial court. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

Sex Offender Registration Act applied to parolee who committed sex offense while juvenile, as parolee was prosecuted and sentenced as adult, and was still "under supervision," i.e., on parole, when Act took effect. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

The provisions of the Sex Offender Registration Act apply retroactively to certain persons who committed registration offenses prior to its enactment. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

The Sex Offender Registration Act applies to a sex offender who committed a registration offense as a juvenile but who was lawfully prosecuted, convicted and sentenced as an adult. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

Dismissal.

District Court's order dismissing city resident's claims against mayor in his individual capacity, alleging that city statute requiring him to register as a sex offender violated his constitutional rights, did not also dismiss claims asserted against mayor in his official capacity, if any. *Washington v. Fenty*, 611 F.Supp.2d 45, 2009 U.S. Dist. LEXIS 36717 (2009).

Ex post facto.

Effects of requirements of District of Columbia Sex Offender Registration Act (SORA) that sex offenders register in other states where they relocated, worked or went to school and that allowed police to notify community of offender's status were not excessive with respect to its civil and nonpunitive purpose, and therefore, application to parolee, who was convicted of sex offenses prior to enactment of SORA, did not violate Ex Post Facto Clause; registration requirements did not restrain activities he could pursue, and effectiveness of registration depended on making vulnerable people aware of presence of sex offenders in their communities, which police notification helped achieve. *Anderson v. Holder*, 647 F.3d 1165, 2011 U.S. App. LEXIS 16856 (C.A.D.C. 2011).

District of Columbia's Sex Offender Registration Act (SORA) was not punitive, and thus its retroactive application to parolee, who was convicted of sex-related offenses 12 years prior to enactment of SORA, did not contravene Ex Post Facto Clause. *Anderson v. Holder*, 691 F.Supp.2d 57, 2010 U.S. Dist. LEXIS 19983 (2010), affirmed by 647 F.3d 1165, 396 U.S. App. D.C. 281, 2011 U.S. App. LEXIS 16856 (2011).

In custody or under supervision.

Conviction and sentence of incarceration for driving without permit subjected defendant,

who had prior conviction for sex offense, to requirements under Sex Offender Registration Act, regardless that defendant had completed sentence on qualifying sex offense prior to Act's enactment. *Sullivan v. United States*, 990 A.2d 477, 2010 D.C. App. LEXIS 96 (2010).

Registration offense.

Defendant charged with failing to register under SORNA had a duty to register under SORNA based on prior conviction under District of Columbia law for misdemeanor sexual abuse, even though the District of Columbia had yet to implement SORNA; defendant's duty to register under SORNA was not contingent on District of Columbia's implementation of the law, District of Columbia maintained a sex offender registry, and defendant had acknowledged on four separate occasions his duty to register as a sex offender under District of Columbia law. *United States v. Ross*, 778 F.Supp.2d 13, 2011 U.S. Dist. LEXIS 42042 (2011).

Resident alleged a practice, policy, or custom of city, as required to state a claim against mayor in his official capacity, in civil rights action under §§ 1983 alleging ex post facto, double jeopardy, due process, and equal protection violations, by alleging that enforcement of statute requiring him to register as a sex offender violated his constitutional protections. *Washington v. Fenty*, 611 F.Supp.2d 45, 2009 U.S. Dist. LEXIS 36717 (2009).

Defendant was "sex offender" who lived or resided in District of Columbia at time he failed to register, as required to support conviction for failure to register, even though Government elicited evidence that defendant had moved to Maryland, where defendant had updated his District of Columbia address when he registered previously, and he did not report his address before he moved to Maryland or before date that he was required to renew registration. *Jones v. United States*, 35 A.3d 428, 2011 D.C. App. LEXIS 675 (2011).

Standing.

Parolee was subjected to District of Columbia's Sex Offender Registration Act (SORA), and thus had legal standing to challenge that statute's enforcement against him. *Anderson v. Holder*, 691 F.Supp.2d 57, 2010 U.S. Dist. LEXIS 19983 (2010), affirmed by 647 F.3d 1165, 396 U.S. App. D.C. 281, 2011 U.S. App. LEXIS 16856 (2011).

Validity.

While the registration and public notification provisions of District of Columbia's Sex Offender and Registration Act (SORA) were enacted simultaneously, the registration provisions could stand on their own as serving important law enforcement purposes separate from community notification; therefore, while

the public notification provisions of the SORA violate sex offenders' rights to due process, registration provisions, which inflicted no public stigma on sex offenders, did not. *Doe #1 v. Williams*, 167 F.Supp.2d 45, 2001 U.S. Dist. LEXIS 21699 (2001), reversed in part by, dismissed in part by 2003 U.S. App. LEXIS 12570 (D.C. Cir. June 19, 2003).

Sex Offender Registration Act (SORA) did not infringe any fundamental rights or liberty interests of persons who committed sex offenses before it was enacted or who were acquitted of sex offenses by reason of insanity, and was rationally related to a legitimate governmental goal of protecting the community from recidivist sexual offender; therefore, SORA did not violate principles of substantive due process. In *re W.M.*, 851 A.2d 431, 2004 D.C. App. LEXIS 294 (2004), writ of certiorari denied by 543 U.S. 1062, 125 S. Ct. 885, 160 L. Ed. 2d 792, 2005 U.S. LEXIS 27, 73 U.S.L.W. 3398 (2005).

Sex Offender Registration Act (SORA) did not deny procedural due process by requiring all persons who have committed sex offenses to register without affording them a hearing on their current dangerousness. In *re W.M.*, 851 A.2d 431, 2004 D.C. App. LEXIS 294 (2004), writ of certiorari denied by 543 U.S. 1062, 125 S. Ct. 885, 160 L. Ed. 2d 792, 2005 U.S. LEXIS 27, 73 U.S.L.W. 3398 (2005).

Sex Offender Registration Act (SORA) established civil, regulatory scheme that was not punitive and, thus, did not inflict punishment on persons who committed sex offenses before it was enacted or who were acquitted of sex offenses by reason of insanity in violation of the ex post facto, double jeopardy, or due process clauses. In *re W.M.*, 851 A.2d 431, 2004 D.C. App. LEXIS 294 (2004), writ of certiorari denied by 543 U.S. 1062, 125 S. Ct. 885, 160 L. Ed. 2d 792, 2005 U.S. LEXIS 27, 73 U.S.L.W. 3398 (2005).

§ 22-4002. Registration period.

(a) Except as set forth in subsection (b) of this section, the registration period shall start when a disposition described in § 22-4001(3)(A) occurs and continue until the expiration of any time being served on probation, parole, supervised release, conditional release, or convalescent leave, or 10 years after the sex offender is placed on probation, parole, supervised release, conditional release, or convalescent leave, or is unconditionally released from a correctional facility, prison, hospital or other place of confinement, whichever is latest, except that:

(1) The Agency may give a sex offender credit for the time the sex offender was registered in another jurisdiction;

(2) The Agency may deny a sex offender credit for any time in which the sex offender is detained, incarcerated, confined, civilly committed, or hospitalized and for any time in which a sex offender was registered prior to a revocation of probation, parole, supervised release, conditional release, or convalescent leave; and

(3) The registration period is tolled for any time the sex offender fails to register or otherwise fails to comply with the requirements of this chapter.

(b) The registration period shall start when a disposition described in § 22-4001(3)(A) occurs and continue throughout the lifetime of a sex offender who:

(1) Committed a registration offense that is a lifetime registration offense;

(2) Was determined to be a sexual psychopath under §§ 22-3803 through 22-3811;

(3) Has been subject on 2 or more occasions to a disposition described in § 22-4001(3)(A) that involved a felony registration offense or a registration offense against a minor; or

(4) Has been subject to 2 or more dispositions described in § 22-4001(3)(A), relating to different victims, each of which involved a felony registration offense or a registration offense against a minor.

(c) The Agency may suspend the requirement to register or any other requirement under this chapter during any period of time in which a sex offender is detained, incarcerated, confined, civilly committed or hospitalized in a secure facility.

(d) Other than a suspension under subsection (c) of this section, a sex offender shall not be eligible for relief from the registration requirements.

(July 11, 2000, D.C. Law 13-137, § 3, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

CASE NOTES

Construction with other laws.

Fact that defendant convicted of misdemeanor child abuse was required to register pursuant to the Sex Offenders Registration Act (SORA) did not convert such petty offense into a “serious” crime for which defendant was entitled to jury trial; SORA was a remedial regu-

latory enactment, not a penal law, that was adopted to protect the public, especially minors, from the threat of recidivism posed by sex offenders who have been released into the community. *Thomas v. United States*, 942 A.2d 1180, 2008 D.C. App. LEXIS 87 (2008).

§ 22-4003. Certification duties of the Superior Court.

(a) Upon a finding that a defendant committed a registration offense, the Court shall enter an order certifying that the defendant is a sex offender and that the defendant will be subject to registration for the period set forth in § 22-4002(a) or (b). The Court shall advise the sex offender of that person’s duties under this chapter, shall order the sex offender to report to the Agency to register as required by the Agency and to comply with the requirements of this chapter, and shall require the sex offender to read and sign the order.

(b) The Court shall provide to the Agency a copy of the certification and order and such other records and information as will assist in the registration of the sex offender.

(c) In any case where the Court orders the release of a sex offender into the community following a period of detention, incarceration, confinement, civil commitment, or hospitalization, the Court shall:

(1) If the sex offender has been certified as a sex offender under subsection (a) of this section, provide the sex offender with a copy of the order required under subsection (a) of this section and require the sex offender to read and sign the copy of the order; or

(2) If the sex offender has not been certified as a sex offender under subsection (a) of this section, follow the procedures set forth under subsection (a) of this section.

(d) The applicability of the requirements of this chapter to a person otherwise subject to this chapter does not depend on the Court’s making a certification under subsection (a) of this section. The Court is required to enter an order certifying that a person is a sex offender only when —

(1) A defendant is found in a proceeding before the Court to have committed a registration offense;

(2) The Court, on or after July 11, 2000, orders the release of a sex

offender into the community following a period of detention, incarceration, confinement, civil commitment, or hospitalization;

(3) The government makes a motion for such a certification and the Court grants the motion; or

(4) A motion is filed as authorized under § 22-4004 and the Court denies the motion.

(July 11, 2000, D.C. Law 13-137, § 4, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

§ 22-4004. Dispute resolution procedures in the Superior Court.

(a)(1) A person, other than a person for whom a certification has been made under § 22-4003(a), may seek review of a determination by the Agency that the person is required to register or to register for life under this chapter if:

(A) The determination depends on a finding or findings which are not apparent from the disposition described in § 22-4001(3)(A), including, but not limited to, a finding not apparent from the disposition as to:

(i) Whether the victim of an offense was a minor or under 12 year of age;

(ii) Whether certain sexual acts or contacts were forcible;

(iii) Whether the exemption of § 22-4016(b) applies; or

(iv) Whether the standards under § 22-4001(6)(E) or (8)(G) for coverage offenses under the laws of other jurisdictions are satisfied; or

(B) The person asserts that the records establishing that he or she was convicted or found not guilty by reason of insanity of a registration offense or offenses or a lifetime registration offense or offenses, or that he or she was determined to be a sexual psychopath as provided in § 22-4001(3)(A)(ii), are erroneous.

(2) In order to seek review of a determination, as authorized by paragraph (1) of this subsection, the person shall:

(A) At the time the person is first informed by the Agency that it has determined that the person must register as a sex offender or must register as a sex offender for life, provide the Agency with a notice of intent to seek review of the determination; and

(B) Within 30 days of providing the notice of intent described in subparagraph (A) of this paragraph, file a motion in the Court setting forth the facts which he or she disputes and attaching any documents or affidavits upon which he or she intends to rely. The Court shall decide the motion within 60 days of its filing.

(3) If a person fails to follow the procedures set forth in paragraph (2) of this subsection, he or she may nevertheless seek review of a determination, as authorized by paragraph (1) of this subsection, but only for good cause shown and to prevent manifest injustice, by filing a motion within 3 years of the date on which a determination is made by the Agency that the person must register

as a sex offender or must register as a sex offender for life. The release and dissemination of information concerning the person, including community notification, as authorized by this chapter for sex offenders will, however, proceed unless and until the Court issues an order that the person is not required to register as a sex offender.

(b) Unless the motion described in subsection (a) of this section and attached documents and affidavits conclusively show that the person is entitled to no relief, the Court shall cause notice thereof to be served upon the prosecuting attorney.

(c)(1) The Court may, in its sole discretion, decide a motion made under subsection (a) of this section on the basis of the motion, affidavits, the files and records of the case, other written documents, proffers of the parties, or an evidentiary hearing. If the Court determines that a hearing is necessary to decide the issue or if the interests of justice otherwise require, the Court shall appoint counsel for the person if he or she is not represented by counsel and meets the financial criteria for the appointment of counsel.

(2) If the Court concludes that the person is required to register under this chapter, the Court shall follow the procedures set forth in § 22-4003(a) and (b). If the Court concludes that the person is not required to register under this chapter or is not required to register for life under this chapter, the Court shall enter an order certifying that the person is not required to register under this chapter or is not required to register for life under this chapter and shall provide the Agency with a copy of that order.

(July 11, 2000, D.C. Law 13-137, § 5, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

CASE NOTES

ANALYSIS

In general.

Timeliness of appeal.

In general.

Trial court's error in assigning burden of persuasion to individual who was acquitted of sodomy with a 13-year-old boy by reason of insanity on factual issue of use of force in underlying offense, which would determine whether individual would have to register for life or for ten years, under the Sex Offender Registration Act (SORA), required remand to trial court; evidentiary hearing likely would be necessary, as outcome could depend on individual's credibility if trial judge would find government's evidence sufficient to establish that offense involved the use of force. In re W.M., 851 A.2d 431, 2004 D.C. App. LEXIS 294 (2004), writ of certiorari denied by 543 U.S. 1062, 125 S. Ct. 885, 160 L. Ed. 2d 792, 2005 U.S. LEXIS 27, 73 U.S.L.W. 3398 (2005).

Due process required government to shoulder the burden of persuasion on the factual issue of

use of force in underlying offense, which would determine whether individual who was acquitted of sodomy with a 13-year-old boy by reason of insanity would have to register for life or for ten years, under the Sex Offender Registration Act (SORA), and the standard of proof that government had to meet as to that issue was the usual "preponderance of the evidence" standard, not a higher, "clear and convincing evidence" standard. In re W.M., 851 A.2d 431, 2004 D.C. App. LEXIS 294 (2004), writ of certiorari denied by 543 U.S. 1062, 125 S. Ct. 885, 160 L. Ed. 2d 792, 2005 U.S. LEXIS 27, 73 U.S.L.W. 3398 (2005).

When a person disputes finding of the Court Services and Offender Supervision Agency (CSOSA) that certain sexual acts or contacts were forcible, for purposes of determining classification level for registration requirements under the Sex Offender Registration Act (SORA), due process requires the government to bear the burden of persuasion; however, due process does not require the government to meet that burden by more than a preponder-

ance of the evidence. In re W.M., 851 A.2d 431, 2004 D.C. App. LEXIS 294 (2004), writ of certiorari denied by 543 U.S. 1062, 125 S. Ct. 885, 160 L. Ed. 2d 792, 2005 U.S. LEXIS 27, 73 U.S.L.W. 3398 (2005).

District of Columbia waived appellate review of its claim that habeas petitioner who challenged applicability of sex offender registration law failed to first exhaust his administrative remedies by applying to Court Services and Offender Supervision Agency for District of Columbia (CSOSA) before he went to court; District raised that claim for first time on appeal, and petitioner's action was functionally equivalent to application for judicial review contemplated by Sex Offender Registration Act.

Cannon v. Igborzurkie, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

Timeliness of appeal.

Defendant did not forfeit claim that he was not sex offender subject to Sex Offender Registration Act by failing to seek judicial review of designation within 30 days; judicial review was appropriate remedy if sex offender designation was based on finding or findings not apparent from record, but defendant's claim was not challenging any finding of fact, but was instead challenging legality of designation based on his conviction, after enactment of Act, for driving without permit. Sullivan v. United States, 990 A.2d 477, 2010 D.C. App. LEXIS 96 (2010).

§ 22-4005. Duties of the Department of Corrections.

(a) Immediately before the release into the community of a sex offender in its custody or under its supervision, or immediately before the transfer of a sex offender to a halfway house, whichever is earlier, the Department of Corrections shall notify the Agency of the sex offender's proposed release, and shall provide to the Agency such records and information as will assist the Agency in carrying out its responsibilities under this chapter.

(b) Immediately before the release into the community of a sex offender in its custody or under its supervision or immediately before a sex offender transfers to a halfway house, whichever is earlier, the Department of Corrections shall inform the sex offender orally and in writing of the duty to register and of the time when and place where he or she is to appear to register and shall require the sex offender to read and sign the notice.

(July 11, 2000, D.C. Law 13-137, § 6, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

§ 22-4006. Duties of the Department of Mental Health.

(a) The Agency shall have the authority to notify the Department of Mental Health in writing of those sex offenders in the custody or under the supervision of the Department of Mental Health who are required to register pursuant to this chapter.

(b) With respect to sex offenders for whom notice has been given pursuant to subsection (a) of this section, the Department of Mental Health shall inform the Agency when a sex offender:

- (1) Is first granted unaccompanied access to the hospital grounds or is placed on convalescent leave;
- (2) If first conditionally or unconditionally released; or
- (3) Is on unauthorized leave.

(c) The information provided to the Agency by the Department of Mental Health shall include:

- (1) The name of and other identifying information about a sex offender, including a physical description and photograph, if available;
- (2) The action taken under subsection (b) of this section;
- (3) The date on which the action was taken;
- (4) To the extent known, the address at which the sex offender is living or intends to live, works or intends to work, or attends school or intends to attend school; and

(5) Administrative information that may assist the Agency or the Metropolitan Police Department in locating the sex offender.

(d) The Agency and the Metropolitan Police Department are authorized to make further disclosures of the information provided by the Department of Mental Health pursuant to this section as necessary to ensure compliance with this chapter and to prosecute violations of this chapter.

(July 11, 2000, D.C. Law 13-137, § 7, 47 DCR 797; Dec. 18, 2001, D.C. Law 14-56, § 116(h), 48 DCR 7674.)

Effect of amendments. — D.C. Law 14-56, substituted “Department of Mental Health” for “Commission on Mental Health Services” in the heading, and in subsecs. (a), (b), (c), and (d).

Temporary Amendment of Section. — Section 16(h) of D.C. Law 14-51 substituted “Department of Mental Health” for “Commission on Mental Health Services” in the heading; and, in subsecs. (a), (b), (c) and (d), substituted “Department of Mental Health” for “Commission on Mental Health Services”.

Section 19(b) of D.C. Law 14-51 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(h) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(h) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(h) of Mental Health Service Delivery Reform Congressional Review Emer-

gency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

Legislative history of Law 14-51. — Law 14-51, the “Department of Mental Health Establishment Temporary Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-174, which was retained by Council. The Bill was adopted on first and second readings on April 3, 2001, and May 1, 2001, respectively. Signed by the Mayor on May 22, 2001, it was assigned Act No. 14-72 and transmitted to both Houses of Congress for its review. D.C. Law 14-51 became effective on October 30, 2001.

Legislative history of Law 14-56. — Law 14-56, the “Mental Health Service Delivery Reform Act of 2001”, was introduced in Council and assigned Bill No. 14-136, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-119 and transmitted to both Houses of Congress for its review. D.C. Law 14-56 became effective on December 18, 2001.

§ 22-4007. Registration functions of the Court Services and Offender Supervision Agency.

(a) The Agency shall have the authority to adopt and implement procedures and requirements for the registration of sex offenders under this chapter. The procedures and requirements may include, but need not be limited to, requirements that a responsible officer or official shall:

- (1) Inform the sex offender of the duty to register and the penalties for failure to register;

(2) Obtain the information required for registration, which may include such information as the sex offender's name, all aliases used, date of birth, sex, race, height, weight, eye color, identifying marks and characteristics, driver's license number, social security number, PDID, DCDC, FBI and NCIC numbers, home address or expected place of residence, and any current or expected place of employment or school attendance;

(3) Obtain a photograph and set of fingerprints of the sex offender;

(4) Obtain a detailed description of the offense on the basis of which the sex offender is required to register, the victim impact statement, the date of conviction or other disposition related to the offense, and any sentence imposed;

(5) Obtain the sex offender's criminal record and a detailed description of any relevant offense;

(6) Inform the sex offender of the duty to report any change of address, and of any duty to update other registration information, and the procedures for reporting such changes;

(7) Inform the sex offender that if the sex offender moves to another state, or works or attends school in another state, then the sex offender also must report this information, and must register in any such state;

(8) Require the sex offender to read and sign a form stating that the duties of the sex offender under this chapter have been explained; and

(9) Inform a person that if the person disagrees with the determination that he or she is required to register or to register for life under this chapter, he or she must follow the procedures set forth in § 22-4004.

(b) The Agency shall have the authority to direct that a sex offender meet with a responsible officer or official at a reasonable time for the purpose of complying with any requirement adopted by the Agency under this chapter.

(c) The Agency shall have the authority to ensure that the sex offender registry is updated regularly and that outdated information is promptly removed from publicly available information.

(July 11, 2000, D.C. Law 13-137, § 8, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

§ 22-4008. Verification functions of the Court Services and Offender Supervision Agency.

(a) The Agency shall have the authority to adopt and implement procedures and requirements for verification of address information and other information required for registration under this chapter. The procedures and requirements may include, but need not be limited to, requirements that the sex offender:

(1) Verify address information or other information at least annually, or at more frequent intervals as specified by the Agency;

(2) Return address verification forms;

(3) Appear in person for purposes of verification;

(4) Cooperate in the taking of fingerprints and photographs, as part of the verification process; and

(5) Update any information that has changed since any preceding registration or verification as part of the verification process.

(b) The Agency shall have the authority to immediately notify the Metropolitan Police Department if the Agency is unable to verify the address of or locate a sex offender who is required to register under this chapter or if the sex offender otherwise fails to comply with any requirements of this chapter.

(July 11, 2000, D.C. Law 13-137, § 9, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

§ 22-4009. Change of address or other information.

(a) The Agency shall have the authority to adopt and implement procedures and requirements for the reporting by sex offenders of changes in address and changes in other information required for registration.

(b)(1) The Agency shall have the authority to notify the responsible registration agency or authorities in any other jurisdiction to which a sex offender moves, or in which a sex offender works or attends school.

(2) The Agency shall have the authority to provide to the responsible agency or authorities in the other jurisdiction all information concerning the sex offender that may be necessary or useful for registration of the sex offender in that jurisdiction, or for purposes of risk assessment, community notification, or other comparable functions in that jurisdiction.

(July 11, 2000, D.C. Law 13-137, § 10, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

§ 22-4010. Maintenance and release of sex offender registration information by the Court Services and Offender Supervision Agency.

(a) The Agency shall have the authority to maintain and operate the sex offender registry for the District of Columbia, including the authority to maintain the information obtained on sex offenders.

(b) The Agency shall have the authority to enter the information obtained on sex offenders into appropriate record systems and databases and:

(1) Ensure that conviction data and fingerprints are promptly transmitted to the Federal Bureau of Investigation;

(2) Participate in the National Sex Offender Registry on behalf of the District, including providing to the Federal Bureau of Investigation all information required for such participation;

(3) Ensure that information concerning sex offenders is promptly provided or made available to the Metropolitan Police Department, and to other law enforcement and governmental agencies as appropriate; and

(4) Inform the Metropolitan Police Department that a person has provided the Agency with a notice of intent to seek review of the determination

that he or she must register under this chapter in conformity with § 22-4004(a)(2)(A) and that registration information on the person shall not be made publicly available unless and until the Agency informs the Metropolitan Police Department that the Court has certified that the person must register under this chapter, the person has failed to file a motion in the Court within the time allowed by § 22-4004(a)(2)(B), or the person's motion seeking review of the determination has been withdrawn or dismissed.

(c) This chapter does not authorize the Agency to make sex offender registration information publicly available, except as authorized by the rules promulgated under § 22-4011(g), or through the provision of such information to the Metropolitan Police Department or other agencies or authorities as authorized by this chapter.

(July 11, 2000, D.C. Law 13-137, § 11, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

CASE NOTES

Construction and application.

Where language in the Sex Offender Registration Act (SORA) is ambiguous, the Court Services and Offender Supervision Agency's (CSOSA) interpretation is entitled to deference so long as it is reasonable in light of the statute's language, its legislative history, and judicial precedent. In *re Doe* ('s.D.'), 855 A.2d 1100 (2004).

While the judiciary is the final authority on issues of statutory construction, to the extent that the meaning of the Sex Offender Registration Act's (SORA) terms is unclear, the court will accord considerable weight to the construction by the agency responsible for administering the statute. In *re Doe* ('s.D.'), 855 A.2d 1100 (2004).

§ 22-4011. Community notification and education duties of the Metropolitan Police Department.

(a) The Metropolitan Police Department shall have the authority to release and disseminate the information obtained on sex offenders. The authorized activities of the Metropolitan Police Department under this section include, but are not limited to, active and passive notification to all or parts of the community concerning a sex offender, including but not limited to:

- (1) Victims and witnesses;
- (2) Public and private educational institutions, day care entities and other institutions or organizations that provide services to or employ individuals who may be victimized by a sex offender;
- (3) Members of the public or governmental agencies requesting information on identified individuals for employment or foster care background checks or similar purposes;
- (4) The public at large; and
- (5) Any unit of the Metropolitan Police Department and other law enforcement agencies.

(b)(1)(A) Active notification under this section refers to affirmatively informing persons or entities about sex offenders. Authorized means of active notification include, but are not limited to, community meetings, flyers,

telephone calls, door-to-door contacts, electronic notification, direct mailings, and media releases.

(B) Passive notification under this section refers to making information about sex offenders available for public inspection or in response to inquiries. Authorized means of passive notification include, but are not limited to, Internet postings, making registration lists and information about registrants available for inspection at police stations and other locations, and responding to written or oral inquiries in person, through the mail, by telephone, or through email or other electronic means. The Metropolitan Police Department shall develop and implement a system to make available for public inspection by means of the Internet all or part of the portions of the sex offender registry relating to Class A and Class B offenders, as defined in paragraph (2) of this subsection.

(2) For purposes of this section:

(A) Class A offenders shall consist of sex offenders who are required to register for life as provided in § 22-4002(b);

(B) Class B offenders shall consist of sex offenders, other than Class A offenders, who are required to register for an offense against a minor, or who are required to register for sexual abuse of a ward or sexual abuse of a patient or client under Chapter 30 of this title; and

(C) Class C offenders shall consist of sex offenders other than Class A and Class B offenders.

(3) Passive notification may be carried out concerning any sex offender, except that information made available under this section for public inspection by means of the Internet shall be limited to information on Class A and Class B offenders. Active notification concerning Class A offenders may be provided to any person or entity. Active notification concerning Class B and Class C offenders may be provided to:

(A) Law enforcement agencies;

(B) Organizations that deal with or provide services to vulnerable populations or victims of sexual offenses, including but not limited to schools, day care centers, other child care and youth-serving organizations, facilities caring for or providing services to the elderly or persons with impairments, shelters, churches, and victims rights and victims services entities;

(C) Victims of and witnesses to a sex offender's crime or crimes and parents, guardians, and family member of such persons; and

(D) Any person where the Metropolitan Police Department has information indicating that the sex offender may pose a specific risk to that person, and parents, guardians, and family members of such a person.

(c) The Metropolitan Police Department shall conduct community education about the appropriate use of sex offender registration information.

(d) All publicly disseminated sex offender registration information shall contain a warning that crimes committed against sex offenders will be prosecuted to the full extent of the law.

(e) This section does not limit the authority of the Metropolitan Police Department to release information concerning any person, except that the identity of a victim of an offense requiring registration shall be treated as

confidential information as provided in the regulations issued under subsection (g) of this section.

(f) If the Agency informs the Metropolitan Police Department that a person has provided the Agency with a notice of intent to seek review of the determination that he or she must register under this chapter in conformity with § 22-4004(a)(2)(A), the Metropolitan Police Department shall not release registration information on the person to the public unless and until the Agency informs the Metropolitan Police Department that the Court has certified that the person must register under this chapter, the person has failed to file a motion in the Court within the time allowed by § 22-4004(a)(2)(B), or the person's motion for review of the determination has been withdrawn or dismissed.

(g) Within 210 days of the effective date of this chapter, the Mayor shall promulgate proposed rules, in accordance with subchapter I of Chapter 5 of Title 2, to carry out all functions of this chapter. Not less than 75 days prior to the proposed effective date of the proposed rules, the Mayor shall submit them to the Council for a 30-day review period, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the proposed rules, or amendments to existing rules in whole or in part, by resolution within this 30-day review period, the proposed rules or amendments to existing rules shall be deemed approved.

(July 11, 2000, D.C. Law 13-137, § 12, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

CASE NOTES

ANALYSIS

Construction and application.
Due process.
Validity.

Construction and application.

Sex Offender Registration Act applied to parolee who committed sex offense while juvenile, as parolee was prosecuted and sentenced as adult, and was still "under supervision," i.e., on parole, when Act took effect. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

The Sex Offender Registration Act applies to a sex offender who committed a registration offense as a juvenile but who was lawfully prosecuted, convicted and sentenced as an adult. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

Due process.

Public notification provisions of District of Columbia's Sex Offender and Registration Act (SORA) implicated liberty interests protected by procedural due process; stigma-plus test was satisfied since public notification pursuant to

the SORA resulted in stigma, the failure to comply with the registration requirements was independently punishable as a criminal offense, the registration requirements were mandatory conditions of supervised release, thus subjecting an offender to further punishment in the event of a violation, and the term of supervised release could extend for either 10 years or for life, which far exceeded the period of supervised release provided for all other criminal offenses. *Doe #1 v. Williams*, 167 F.Supp.2d 45, 2001 U.S. Dist. LEXIS 21699 (2001), reversed in part by, dismissed in part by 2003 U.S. App. LEXIS 12570 (D.C. Cir. June 19, 2003).

Validity.

Public notification provisions of District of Columbia's Sex Offender and Registration Act (SORA) violated procedural due process; SORA provided no opportunity to be heard on whether, and to what extent, public notification of a sex offender's registry information was necessary to protect the public. *Doe #1 v. Williams*, 167 F.Supp.2d 45, 2001 U.S. Dist. LEXIS 21699 (2001), reversed in part by, dismissed in part by 2003 U.S. App. LEXIS 12570 (D.C. Cir. June 19, 2003).

§ 22-4012. Interagency coordination.

(a) The Agency may request that any agency of the District of Columbia, of another state, or of the United States provide assistance in carrying out the functions described in this chapter.

(b) Notwithstanding any other law, all agencies of the District of Columbia shall:

(1) Have the authority to provide any requested assistance to the Agency in carrying out the functions described in this chapter;

(2) Make available to the Agency information requested by the Agency for the purpose of identifying sex offenders and otherwise carrying out its functions under this chapter; and

(3) Cooperate with the Agency in posting notices and making available information concerning registration requirements in locations where persons entering the District from other jurisdictions may apply for driver's licenses, motor vehicle tags and inspections, housing, or other public assistance or benefits.

(c) Except for the disclosure of information authorized by § 22-4006, nothing in this chapter shall supersede the non-disclosure provisions of Chapter 12 of Title 7.

(July 11, 2000, D.C. Law 13-137, § 13, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

§ 22-4013. Immunity.

(a) The District of Columbia government and its agencies, officials, employees, and agents and the United States government and its agencies, officials, employees, and agents shall be immune from suit for any claim arising from any good faith act of omission under this chapter.

(b) Notwithstanding subsection (a) of this section, the District of Columbia government may be held liable for the negligent disclosure of information to the public in violation of this chapter. A person subjected to such a violation may bring suit in the Court for injunctive or declaratory relief to abate a continuing violation, and for compensatory damages. The action under this subsection shall be the exclusive remedy under the law of the District of Columbia for the negligent disclosure of information in violation of this chapter. Except as provided by this subsection or § 22-4004(a), nothing in this chapter shall be construed to create any private right of action or give rise to any rights enforceable by injunction, mandamus, or otherwise.

(c) If the Court has made a determination under § 22-4003 or § 22-4004 that a person must register or must register for life, or if the Agency has made such a determination and the person has failed to seek review of the determination in conformity with § 22-4004, then the person shall be barred in a suit under this section from contesting the determination or any fact, finding, or issue that was resolved by or necessary to the determination.

(d) Nothing in this section shall be construed as limiting any other defense

or immunity that would otherwise be available to the District of Columbia government, its agencies, officials, employees, or agents or the United States government, its agencies, officials, employees, or agents, or to obligate the District of Columbia government or the United States government to represent or indemnify any official, employee, or agent where such person acts beyond the scope of his or her authority.

(July 11, 2000, D.C. Law 13-137, § 14, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

§ 22-4014. Duties of sex offenders.

During the registration period, a sex offender shall, in the time and manner specified by the Agency:

- (1) Register with the Agency as a sex offender;
- (2) Provide any information required for registration, and cooperate in photographing and fingerprinting;
- (3) Report any change of residence or other change in registration information;
- (4) Periodically verify address and such other registration information as the Agency may specify, including complying with any requirement to return address verification forms or appear in person for the purpose of verification;
- (5) Report if the sex offender is moving to another state, or works or attends school in another state, and register in any such state;
- (6) Acknowledge receipt of information concerning the sex offender's duties under this chapter, including reading and signing a form or forms stating that these duties have been explained to the sex offender; and
- (7) Meet with responsible officers and officials for the purpose of carrying out any requirements adopted by the Agency under this chapter.

(July 11, 2000, D.C. Law 13-137, § 15, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

CASE NOTES

ANALYSIS

In general.
Registration.
Self-incrimination.

In general.

Defendant, who had previously pled guilty to one count of the federal offense of interstate travel with intent to engage in sexual acts with a minor, was required to register under the Sex Offender Registration Act (SORA); defendant's federal offense was substantially similar to the conduct described in the state offenses of attempted enticement of a child and lewd, indecent or obscene acts with a child, and SORA

required registration as a sex offender if an individual committed conduct in a different jurisdiction that was "substantially similar" to a state registration offense. In re Doe ('s.D.'), 855 A.2d 1100 (2004).

Registration.

Defendant was "sex offender" who lived or resided in District of Columbia at time he failed to register, as required to support conviction for failure to register, even though Government elicited evidence that defendant had moved to Maryland, where defendant had updated his District of Columbia address when he registered previously, and he did not report his

address before he moved to Maryland or before date that he was required to renew registration. *Jones v. United States*, 35 A.3d 428, 2011 D.C. App. LEXIS 675 (2011).

Self-incrimination.

Parolee who was allegedly required to submit to polygraph examination and psycho-therapy sessions under District of Columbia's Sex Of-

fender Registration Act (SORA) failed to state self-incrimination claim, absent allegations that he asserted Fifth Amendment privilege against self-incrimination and that he suffered punishment as result. *Anderson v. Holder*, 691 F.Supp.2d 57, 2010 U.S. Dist. LEXIS 19983 (2010), affirmed by 647 F.3d 1165, 396 U.S. App. D.C. 281, 2011 U.S. App. LEXIS 16856 (2011).

§ 22-4015. Penalties; mandatory release condition.

(a) Any sex offender who knowingly violates any requirement of this chapter, including any requirement adopted by the Agency pursuant to this chapter, shall be fined not more than \$1,000, or imprisoned for not more than 180 days, or both. In the event that a sex offender convicted under this section has a prior conviction under this section, or a prior conviction in any other jurisdiction for failing to comply with the requirements of a sex offender registration program, the sex offender shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both.

(b) Compliance with the requirements of this chapter, including any requirements adopted by the Agency pursuant to this chapter, shall be a mandatory condition of probation, parole, supervised release, and conditional release of any sex offender.

(July 11, 2000, D.C. Law 13-137, § 16, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

§ 22-4016. No change in age of consent; registration not required for offenses between consenting adults.

(a) This chapter does not change the age of consent for any sexual conduct under any law of the District of Columbia.

(b) Notwithstanding any other provision of this chapter, the following do not constitute registration offenses:

(1) Any sexual offense between consenting adults or an attempt, conspiracy or solicitation to commit such an offense, except for offenses to which consent is not a defense as provided in § 22-3017;

(2) Any misdemeanor offense that involved a person's sexual touching or attempted or solicited sexual touching of an undercover law enforcement officer where the person believed that the officer was an adult; and

(3) Any misdemeanor offense committed against an adult, except where the offender agrees in a plea agreement to be subject to sex offender registration requirements.

(July 11, 2000, D.C. Law 13-137, § 17, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

CASE NOTES

Registration requirement.

Defendant, who had been charged with misdemeanor sexual abuse and possession of marijuana, was not entitled to jury trial under Sixth Amendment on basis that, if convicted, he would be required to register as a sex offender, thus raising his offenses from “petty” to “serious,” such as would implicate his right to jury

trial; “misdemeanor offense committed against an adult” did not require registration unless such registration was part of plea agreement, victim was 42 years old, and no plea agreement was involved in defendant’s case. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

§ 22-4017. Freedom of Information Act exception.

Except for records made public according to the regulations promulgated by the Mayor pursuant to § 22-4011(g), no sex offender registration information shall be available as a public record under § 2-532.

(July 11, 2000, D.C. Law 13-137, § 18, 47 DCR 797.)

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4001.

CHAPTER 41. SEX OFFENDER REGISTRATION [REPEALED].

Sec.

22-4101 to 24-4117. [Repealed].

§ 22-4101. Definitions. [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 2, 44 DCR 1232; Oct. 14, 1999, D.C. Law 13-49, § 6, 46 DCR 5153; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1101.

Temporary Amendment of Section. — Section 19 of D.C. Law 13-110 repealed the Sex Offender Registration Act of 1996, §§ 24-1101 to 24-1117 1981 Ed. .

Section 21 (b) of D.C. Law 13-110 provided that the act shall expire after 225 days of its having taken effect or upon the effective date of the Sex Offender Registration Act of 1999, whichever occurs first.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — Law 11-274, the “Sex Offender Registration Act of 1996,” was introduced in Council and assigned

Bill No. 11-386, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-510 and transmitted to both Houses of Congress for its review. D.C. Law 11-274 became effective on June 3, 1997.

Legislative history of Law 13-49. — Law 13-49, the “Criminal Code and Clarifying Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-61, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 19, 1999.

Legislative history of Law 13-137. — Law 13-137, the “Sex Offender Registration Act of 1999,” was introduced in Council and assigned Bill No. 13-350, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 10, 2000, it was assigned Act No. 13-248 and transmitted to both Houses of Congress for its review. D.C. Law 13-137 became effective on July 11, 2000.

§ 22-4102. Persons required to register [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 3, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1102.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

For temporary (90-day) repeal of sections, see

§ 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see

§ 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see His-

torical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4103. Establishment of the Sex Offender Registration Advisory Council [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 4, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1103.

Emergency legislation. — For temporary (90-day) amendment of § 24-1116, see § 2 of the Sex Offender Registration Immunity From Liability Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-50, April 6, 1999, 46 DCR 3634).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 24-1101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4104. Duties of the Advisory Council [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 5, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1104.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congress-

sional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4105. Duties of the Court [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 6, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1105.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4106. Duties of the Department of Corrections [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 7, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1106.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4107. Transfer of information to the Department and Federal Bureau of Investigation [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 8, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1107.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4108. Duties of the Board of Parole [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 9, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1108.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 24-1101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 24-1101.

§ 22-4109. Verification. [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 10, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1109.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4110. Notification of changes of address [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 11, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1110.

Temporary Amendment of Section. — Temporary amendment of section: Section 2 of D.C. Law 12-28 amended this section to read as follows:

“(a) A registrant shall immediately report a change of address to the police district having jurisdiction where the registrant has been residing.

“(b) A person who meets the registration

requirements of this act and who moves into the District of Columbia from another jurisdiction shall register with the Department within 10 days of establishing a residence in the District of Columbia, or of re-establishing a residence in the District of Columbia if the person is a former District of Columbia resident.

“(c) If the registrant relocates to another state, the Department shall notify the law enforcement agency with which the registrant must register in the new state.

“(d) The Department shall ensure that the registry is updated promptly, and shall purge outdated addressees and shall include new addresses for all registrants.”

Section 4(b) of D.C. Law 12-28 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-287 amended this section to read as follows:

“(a) A registrant shall immediately report a change of address to the police district having jurisdiction where the registrant has been residing.

“(b) A person who meets the registration requirements of this act and who moves into the District of Columbia from another jurisdiction shall register with the Department within 10 days of establishing a residence in the District of Columbia, or of re-establishing a residence in the District of Columbia if the person is a former District of Columbia resident.

“(c) If the registrant relocates to another state, the Department shall notify the law enforcement agency with which the registrant must register in the new state.

“(d) The Department shall ensure that the registry is updated promptly, and shall purge outdated addresses and shall include new addresses for all registrants.”

Section 4(b) of D.C. Law 12-287 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of § 24-1110 1981 Ed., see § 2 of the Sex Offender Registration Second Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-55, April 21, 1999, 46 DCR 4287).

For temporary (90-day) amendment of § 24-1110 1981 Ed., see § 2 of the Sex Offender Registration Third Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-101, July 9, 1999, 46 DCR 6015).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 12-287. — Law 12-287, the “Sex Offender Registration Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-646. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-386 and transmitted to both Houses of Congress for its review. D.C. Law 12-287 became effective on June 18, 1999.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4111. Registration for change of address to another state [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 12, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1111.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 12-287. — Law 12-287, the “Sex Offender Registration Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-646. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-386 and transmitted to both Houses of Congress for its review. D.C. Law 12-287 became effective on June 18, 1999.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4112. Length of registration [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 13, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1112.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4113. Penalties [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 14, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1113.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4114. Transfer of information and central data base [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 15, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1114.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see

§ 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see

§ 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see His-

torical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4115. Release of information [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 16, 44 DCR 1232; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1115.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congress-

sional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4116. Absolute immunity for members of the Advisory Counsel; immunity for good faith conduct for others [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 17, 44 DCR 1232; Apr. 20, 1999, D.C. Law 12-250, § 2, 46 DCR 1118; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1116.

Temporary Amendment of Section. — Temporary amendment of section: Section 2 of D.C. Law 12-118 rewrote the section.

Section 4(b) of D.C. Law 12-118 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-262 rewrote the section.

Section 4(b) of D.C. Law 12-262 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of § 24-1116 1981 Ed., see § 2 of the Sex Offender Registration Immunity From Liability Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-50, April 6, 1999, 46 DCR 3634).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 12-118. — Law 12-118, the "Sex Offender Registration Immunity From Liability Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-525. The Bill was adopted on first and second readings on February 3, 1998, and March 3, 1998, respectively. Signed by the

Mayor on March 18, 1998, it was assigned Act No. 12-317 and transmitted to both Houses of Congress for its review. D.C. Law 12-118 became effective on June 11, 1998.

Legislative history of Law 12-250. — Law 12-250, the “Sex Offender Registration Immunity From Liability Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-524, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-589 and transmitted to both Houses of Congress for its review. D.C. Law 12-250 became effective on April 20, 1999.

Legislative history of Law 12-262. — Law 12-262, the “Sex Offender Registration Immunity From Liability Second Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-881. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-616 and transmitted to both Houses of Congress for its review. D.C. Law 12-262 became effective on April 20, 1998.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

§ 22-4117. Applicability [Repealed].

Repealed.

(June 3, 1997, D.C. Law 11-274, § 18, 44 DCR 1232; Apr. 27, 1999, D.C. Law 12-270, § 2, 46 DCR 1111; July 11, 2000, D.C. Law 13-137, § 19, 47 DCR 797.)

Prior Codifications. — 1981 Ed., § 24-1117.

Temporary Amendment of Section. — Temporary amendment of section: Section 2 of D.C. Law 12-197 added (c).

Section 5(b) of D.C. Law 12-197 provided that the act shall expire after 225 days of its having taken effect.

Sections 2 to 18 of D.C. Laws 13-110 added the Sex Offender Temporary Act of 1999, designated as sections 24-1121 to 24-1137 1981 Ed. .

Section 219(b) of D.C. Laws 13-110 provided: This act shall expire on the 225th day of its having taken effect or upon the effective date of the Sex Offender Registration Act of 1999, whichever occurs first.

Emergency legislation. — For temporary amendment of section, see § 2 of the Sex Offender Registration Emergency Amendment Act of 1997 (D.C. Act 12-111, July 18, 1997, 44 DCR 4499), § 2 of the Sex Offender Registration Congressional Recess Emergency Amendment Act of 1997 (D.C. Act 12-150, September 29, 1997, 44 DCR 5767), § 2 of the Sex Offender Registration Emergency Amendment Act of 1998 (D.C. Act 12-367, June 5, 1998, 45 DCR 4041), § 2 of the Sex Offender Registration Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-477, October 28, 1998, 45 DCR 8008), and § 2 of the Sex Offender Registration Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-10, February 8, 1999, 46 DCR 2320).

For temporary amendment of section, see § 2 of the Sex Offender Registration Emergency Amendment Act of 1998 (D.C. Act 12-282, February 25, 1998, 45 DCR 1720), § 2 of the Sex

Offender Registration Immunity from Liability Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-365, June 5, 1998, 45 DCR 3880), and § 2 of the Sex Offender Registration Immunity From Liability Second Emergency Amendment Act of 1998 (D.C. Act 12-540, December 24, 1998, 45 DCR 301).

For temporary amendment of section, see § 2 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Emergency Amendment Act of 1998 (D.C. Act 12-427, July 29, 1998, 45 DCR 5725), § 2 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-508, November 4, 1998, 45 DCR 9174), and § 2 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-9, February 8, 1999, 46 DCR 2317).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Emergency Act of 1999 (D.C. Act 13-133, August 4, 1999, 46 DCR 6771).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Legislative Review Emergency Act of 1999 (D.C. Act 13-176, November 2, 1999, 46 DCR 9244).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congressional Review Emergency Act of 1999 (D.C. Act 13-229, January 11, 2000, 47 DCR 487).

For temporary (90-day) repeal of sections, see § 19 of the Sex Offender Registration Congress-

sional Review Emergency Act of 2000 (D.C. Act 13-308, April 7, 2000, 47 DCR 2714).

Legislative history of Law 11-274. — For legislative history of D.C. Law 11-274, see Historical and Statutory Notes following § 22-4101.

Legislative history of Law 12-197. — Law 12-197, the “Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-699. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 8, 1998, it was assigned Act No. 12-474 and transmitted to both Houses of Congress for its review. D.C.

Law 12-197 became effective on March 26, 1999.

Legislative history of Law 12-270. — Law 12-270, the “Sex Offender Registration Risk Assessment Clarification Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-700, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-586 and transmitted to both Houses of Congress for its review. D.C. Law 12-270 became effective on April 27, 1999.

Legislative history of Law 13-137. — For Law 13-137, see notes following § 22-4101.

SUBTITLE III-A. DNA TESTING.

CHAPTER 41A. DNA TESTING AND POST-CONVICTION RELIEF FOR INNOCENT PERSONS.

Sec.

22-4131. Definitions.

22-4132. Pre-conviction DNA testing.

22-4133. Post-conviction DNA testing.

22-4134. Preservation of evidence.

Sec.

22-4135. Motion to vacate a conviction or grant a new trial on the ground of actual innocence.

§ 22-4131. Definitions.

For the purposes of this chapter, the term:

(1) “Actual innocence” or “actually innocent” means that the person did not commit the crime of which he or she was convicted.

(2) “Biological material” means a sexual assault forensic examination kit, semen, vaginal fluid, blood, saliva, visible skin tissue, or hair which apparently derived from the perpetrator of a crime or, under circumstances that may be probative of the perpetrator’s identity, apparently derived from the victim of a crime.

(3) “Crime of violence” means the crimes cited in § 23-1331(4).

(4) “DNA” means deoxyribonucleic acid.

(5) “DNA testing” means forensic DNA analysis of biological material.

(6) “Law enforcement agencies” means the Metropolitan Police Department, the Corporation Counsel for the District of Columbia, prosecutors, or any other governmental agency that has the authority to investigate, make arrests for, or prosecute or adjudicate District of Columbia criminal or delinquency offenses. The term “law enforcement agencies” shall include law enforcement agencies that have entered into cooperative agreements with the Metropolitan Police Department pursuant to § 5-133.17, to the extent the law enforcement agency is acting pursuant to such a cooperative agreement.

(7) “New evidence” means evidence that:

(A) Was not personally known and could not, in the exercise of reasonable diligence, have been personally known to the movant at the time of the trial or the plea proceeding;

(B) Was personally known to the movant at the time of the trial or the plea proceeding, but could not be produced at that time because:

(i) The presence or the testimony of a witness could not be compelled or, in the exercise of reasonable diligence by the movant, otherwise obtained; or

(ii) Physical evidence, in the exercise of the movant’s reasonable diligence, could not be obtained; or

(C) Was obtained as a result of post-conviction DNA testing.

(May 17, 2002, D.C. Law 14-134, § 2, 49 DCR 408.)

Legislative history of Law 14-134. — Law 14-134, the “Innocence Protection Act of 2001”, was introduced in Council and assigned Bill

No. 14-153, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 6, 2001,

and December 4, 2001, respectively. Signed by the Mayor on December 21, 2001, it was assigned Act No. 14-222 and transmitted to both

Houses of Congress for its review. D.C. Law 14-134 became effective on May 17, 2002.

CASE NOTES

ANALYSIS

Evidence.

Review.

Testimony.

Evidence.

Trace skin cells that murder defendant alleged might be present on items taken from crime scene were not “biological material” that was eligible for post-conviction DNA testing pursuant to the Innocence Protection Act (IPA); IPA defined “biological material,” in part, as “visible skin tissue,” but trace skin cells were not visible, in that they were microscopic and certainly not perceptible to normal, or even exceptional, eyesight. *Hood v. United States*, 28 A.3d 553, 2011 D.C. App. LEXIS 553 (2011).

Defendant failed to exercise reasonable diligence to obtain the testimony of witness, and thus witness’s affidavit did not constitute newly discovered evidence under the Innocence Protection Act (IPA); defendant learned of witness’s existence on the first day of trial, and witness lived next door to the crime scene at the time of trial, and thus would have been easy to locate. *Richardson v. United States*, 8 A.3d 1245, 2010 D.C. App. LEXIS 676 (2010).

Review.

Defendant’s second motion attacking his sen-

tence was procedurally barred; the second motion asserted a claim of ineffective assistance of trial counsel, defendant knew of counsel’s alleged deficiency before his direct appeal and the filing of his first motion to attack sentence, and defendant failed to raise the claim on direct appeal or in his first motion attacking sentence. *Richardson v. United States*, 8 A.3d 1245, 2010 D.C. App. LEXIS 676 (2010).

To the extent that the Innocence Protection Act (IPA) affords the trial court discretion in its application of the IPA, Court of Appeals reviews for abuse of discretion. *Veney v. United States*, 936 A.2d 811, 2007 D.C. App. LEXIS 840 (2007).

Testimony.

Witness’s testimony did not constitute proof of defendant’s actual innocence, for the purpose of the Innocence Protection Act (IPA); witness’s testimony that the victim’s mother, who was the only person to identify defendant as the victim’s assailant, left her residence after hearing shots fired without witness did not establish defendant’s actual innocence, rather, the testimony could only have been used to impeach mother’s identification. *Richardson v. United States*, 8 A.3d 1245, 2010 D.C. App. LEXIS 676 (2010).

§ 22-4132. Pre-conviction DNA testing.

(a) Prior to trial for or the entry of a plea to a crime of violence, the defendant shall be informed in open court of physical evidence seized or recovered in the investigation or prosecution of the case which may contain biological material and of the results of any DNA testing that has been performed on such evidence.

(b) A defendant charged with a crime of violence shall be informed in open court:

(1) That he or she may request or waive independent DNA testing prior to trial or the entry of a plea if:

(A)(i) DNA testing has resulted in the inclusion of the defendant as a source of the biological material; or

(ii) Under circumstances that are probative of the perpetrator’s identity, DNA testing has resulted in the inclusion of the victim as a source of the biological material; and

(B) There is sufficient biological material to conduct another DNA test;

(2) That he or she may request or waive DNA testing of biological material prior to trial or the entry of a plea if the biological material has not been subjected to DNA testing; and

(3) Of the potential evidentiary value of DNA evidence in the defendant's case and the consequences of requesting or waiving DNA testing.

(c) A defendant who makes a knowing, intelligent, and voluntary waiver of DNA testing or independent DNA testing pursuant to subsection (b) of this section prior to trial or the entry of a plea is not eligible for post-conviction DNA testing under § 22-4133 unless the defendant is entitled to have the conviction to which the DNA evidence relates set aside under § 23-110 or Rule 32 of the Superior Court Rules of Criminal Procedure.

(May 17, 2002, D.C. Law 14-134, § 3, 49 DCR 408.)

Legislative history of Law 14-134. — For Law 14-134, see notes following § 22-4131.

CASE NOTES

ANALYSIS

Discretion of court.
Notice.
Post conviction testing.
Pretrial testing.
Request.
Reversal.
Review.
Waiver of testing.

Discretion of court.

To the extent that the Innocence Protection Act (IPA) affords the trial court discretion in its application of the IPA, Court of Appeals reviews for abuse of discretion. *Veney v. United States*, 936 A.2d 811, 2007 D.C. App. LEXIS 840 (2007).

Trial court does not have discretion to alter or ignore the notification requirements contained in the Innocence Protection Act of 2001 (IPA), which permits a defendant charged with a crime of violence to request independent testing of the government's biological evidence; the statute unambiguously states that the notifications "shall" be made before trial in open court. *Teoume-Lessane v. United States*, 931 A.2d 478, 2007 D.C. App. LEXIS 684 (2007), writ of certiorari denied by 555 U.S. 927, 129 S. Ct. 301, 172 L. Ed. 2d 220, 2008 U.S. LEXIS 6025, 77 U.S.L.W. 3206 (2008).

Trial court did not abuse its discretion in declining request initiated by defense counsel shortly before jury selection for pre-trial DNA testing, pursuant to Innocence Protection Act (IPA), in prosecution for child sexual abuse; court had firm and accurate command of long history of continuances and delays, of the many opportunities given defendant in open court to choose independent DNA testing, and of the eleventh-hour nature of request for continuance of the eleventh trial date, and defendant knew from judge's prior statements in open court that he was able to have DNA testing if he chose to do so, and he knew of potential eviden-

tiary value of such testing. *Veney v. United States*, 929 A.2d 448, 2007 D.C. App. LEXIS 472 (2007), modified by 936 A.2d 809, 2007 D.C. App. LEXIS 673 (D.C. 2007), reprinted as modified at 936 A.2d 811, 2007 D.C. App. LEXIS 840 (D.C. 2007).

There is nothing within Innocence Protection Act (IPA), providing that a defendant charged with crime of violence shall be informed in open court that he may request or waive DNA testing of biological material prior to trial or entry of plea if the biological material has not been subjected to DNA testing, that constrains a trial court's traditional discretion when responding to a request for pretrial DNA testing, and the court's traditional discretion includes the power and responsibility to weigh the relevance, or probative value, of all evidence against the danger of unfair prejudice. *Ventura v. United States*, 927 A.2d 1090, 2007 D.C. App. LEXIS 391 (2007).

Trial court has discretion to deny a request for pretrial DNA testing under Innocence Protection Act (IPA), which provides that a defendant charged with a crime of violence shall be informed in open court that he may request or waive DNA testing of biological material prior to trial or the entry of a plea if the biological material has not been subjected to DNA testing. *Ventura v. United States*, 927 A.2d 1090, 2007 D.C. App. LEXIS 391 (2007).

Notice.

Defendants' cursory mention on appeal of notice provision in Innocence Protection Act relating to pre-conviction DNA testing was an insufficient basis for reversing first-degree sexual abuse convictions on the ground that the government consumed all of the penile swab samples taken from defendants in conducting DNA testing. *Kaliku v. United States*, 994 A.2d 765, 2010 D.C. App. LEXIS 261 (2010).

Trial court substantially complied with provision of Innocence Protection Act (IPA) requir-

ing that defendant receive personal notice of availability and potential evidentiary value of independent DNA testing, in prosecution for child sexual abuse, as court addressed co-defendant, with whom defendant's case had been joined for purposes of Frye litigation, and defendant's counsel at various times in open court in defendant's presence, to determine if defendant wanted to have independent testing done on DNA evidence, and defendant heard in open court that independent testing was available, and of the potential evidentiary value of DNA evidence in a case similar to his own. *Veney v. United States*, 929 A.2d 448, 2007 D.C. App. LEXIS 472 (2007), modified by 936 A.2d 809, 2007 D.C. App. LEXIS 673 (D.C. 2007), reprinted as modified at 936 A.2d 811, 2007 D.C. App. LEXIS 840 (D.C. 2007).

Post conviction testing.

While the Innocence Protection Act (IPA) would afford a defendant an opportunity, prior to trial, to have further testing done after the government's test results were received, post-conviction testing under the Act was intended to be limited to situations testing was not previously done, and has a reasonable probability of producing new evidence of actual innocence of the defendant. *U.S. v. Cuffey*, 132 WLR 385 (Super. Ct. 2004).

Pretrial testing.

Defendant's searching for the presence vel non of the blood of a third person to disprove the occurrence of a separate encounter, rather than the presence of the blood of the perpetrator or victim of the present offense, did not provide defendant an avenue under the Innocence Protection Act (IPA) to request pretrial DNA testing of the biological material on his bloody clothing, much less provide a right to such testing. *Ventura v. United States*, 927 A.2d 1090, 2007 D.C. App. LEXIS 391 (2007).

Defendant was not entitled to pretrial DNA testing of the biological material on his bloody clothing, under Innocence Protection Act (IPA), because no potential relevance was established for the results of that testing; the prosecution case relied upon defendant's clothing only for identification purposes because it demonstrated to the jury that such clothing matched the physical description of the clothing worn by the complainant's assailant. *Ventura v. United States*, 927 A.2d 1090, 2007 D.C. App. LEXIS 391 (2007).

Innocence Protection Act (IPA), providing that a defendant charged with a crime of violence shall be informed in open court that he may request or waive DNA testing of biological material prior to trial or the entry of a plea if the biological material has not been subjected to DNA testing, does not confer an automatic "right" to pretrial DNA testing upon request.

Ventura v. United States, 927 A.2d 1090, 2007 D.C. App. LEXIS 391 (2007).

Because DNA testing was not done, DNA testing did not result in the inclusion of the defendant or the victim as a source of the biological material, and thus, Innocence Protection Act (IPA), providing that defendant charged with crime of violence shall be informed in open court that he may request or waive independent DNA testing prior to trial or the entry of a plea if DNA testing has resulted in the inclusion of the defendant as a source of the biological material, was not applicable. *Ventura v. United States*, 927 A.2d 1090, 2007 D.C. App. LEXIS 391 (2007).

Request.

Term "request," as used in Innocence Protection Act (IPA) provision requiring that a defendant charged with a crime of violence be informed in open court that he may "request" or waive DNA testing of biological material prior to trial or the entry of a plea if the biological material has not been subjected to DNA testing, means to ask for something, to do something, or for permission or opportunity to do something. *Ventura v. United States*, 927 A.2d 1090, 2007 D.C. App. LEXIS 391 (2007).

Reversal.

Trial court's failure to inform defendant before trial and on the record of his rights with respect to independent testing of the government's biological evidence, as required by the Innocence Protection Act of 2001 (IPA), did not require reversal of defendant's conviction for first-degree child sexual abuse as a matter of law, regardless of defendant's failure to object at trial; statute was devoid of any language mandating reversal of an otherwise valid conviction because of the court's failure to comply with its pre-trial notification requirements. *Teoume-Lessane v. United States*, 931 A.2d 478, 2007 D.C. App. LEXIS 684 (2007), writ of certiorari denied by 555 U.S. 927, 129 S. Ct. 301, 172 L. Ed. 2d 220, 2008 U.S. LEXIS 6025, 77 U.S.L.W. 3206 (2008).

Review.

Trial court's failure to inform defendant before trial and on the record of his rights with respect to independent testing of the government's biological evidence, as required by the Innocence Protection Act of 2001 (IPA), did not affect defendant's substantial rights, for purposes of plain error analysis, during prosecution for first-degree child sexual abuse; whatever DNA testing of the hairs at issue might have shown, it would not have proven that the other biological material recovered from the complainant's body came from someone other than defendant, nor could it have proven that defendant did not commit the crime. *Teoume-Lessane v. United States*, 931 A.2d 478, 2007

D.C. App. LEXIS 684 (2007), writ of certiorari denied by 555 U.S. 927, 129 S. Ct. 301, 172 L. Ed. 2d 220, 2008 U.S. LEXIS 6025, 77 U.S.L.W. 3206 (2008).

Defendant's claim that his conviction for first-degree child sexual abuse had to be reversed because, contrary to provisions of the Innocence Protection Act of 2001 (IPA), the trial court failed to inform him before trial and on the record of his rights with respect to independent testing of the government's biological evidence, would be reviewed by the Court of Appeals for plain error, where defendant did not raise his objection to lack of notice under the IPA in the proceedings before the trial court. *Teoume-Lessane v. United States*, 931 A.2d 478, 2007 D.C. App. LEXIS 684 (2007), writ of

certiorari denied by 555 U.S. 927, 129 S. Ct. 301, 172 L. Ed. 2d 220, 2008 U.S. LEXIS 6025, 77 U.S.L.W. 3206 (2008).

Waiver of testing.

Defendant was not barred from requesting post-conviction relief pursuant to Innocence Protection Act (IPA) to obtain independent DNA testing on basis that he made knowing, intelligent, and voluntary waiver of DNA testing, in prosecution for child sexual abuse, as record did not support conclusion that defendant made a full voluntary waiver of such testing, given the absence of a suitable colloquy in open court. *Veney v. United States*, 936 A.2d 811, 2007 D.C. App. LEXIS 840 (2007).

§ 22-4133. Post-conviction DNA testing.

(a) A person in custody pursuant to the judgment of the Superior Court of the District of Columbia for a crime of violence may, at any time after conviction or adjudication as a delinquent, apply to the court for DNA testing of biological material that:

(1) Was seized or recovered as evidence in the investigation or prosecution that resulted in the conviction or adjudication as a delinquent or can otherwise be identified as evidence in the case;

(2) Is in the actual or constructive possession of the District of Columbia or the United States, or has been retained by any other person or entity under conditions sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect; and

(3)(A) Was not previously subject to DNA testing because DNA testing was not readily available in criminal cases in the District of Columbia at the time of conviction or adjudication as a delinquent;

(B) Was not previously subjected to the type of DNA testing being requested and the new type of DNA testing would have a reasonable probability of providing a more probative result than tests previously conducted;

(C) Was not previously subjected to DNA testing because of circumstances that would entitle the applicant to relief under § 23-110 or Rule 32 of the Superior Court Rules of Criminal Procedure; or

(D) Was not previously subjected to DNA testing because it is new evidence as defined in § 22-4131(7)(A) or (B).

(b) The application shall:

(1) Include an affidavit by the applicant, under penalty of perjury, stating that the applicant is actually innocent of the crime that is the subject of the application; provided, that the denial of an application for testing or an inconclusive result produced by DNA testing shall not be admissible in any prosecution based on the filing of a false affidavit;

(2) Identify the specific evidence for which DNA testing is requested;

(3) Set forth the reason that the requested DNA testing was not previously obtained; and

(4) Explain how the DNA evidence would help establish that the applicant is actually innocent despite having been convicted at trial or having pled guilty.

(c) Unless the application and files and records of the case conclusively show that the applicant is entitled to no relief, the court shall notify the prosecution of an application made pursuant to subsection (a) of this section and shall afford the prosecution an opportunity to respond. Upon receiving notice of an application made pursuant to subsection (a) of this section, the prosecution shall take the necessary steps to ensure that any remaining biological material that was obtained in connection with the case or investigation is preserved pending the completion of proceedings under this section.

(d) The court shall order DNA testing pursuant to an application made under subsection (a) of this section upon a determination that the application meets the criteria set forth in subsections (a) and (b) of this section and there is a reasonable probability that testing will produce non-cumulative evidence that would help establish that the applicant was actually innocent of the crime for which the applicant was convicted or adjudicated as delinquent.

(e)(1) The cost of DNA testing ordered pursuant to subsection (d) of this section shall be paid by the District of Columbia, to the same extent provided for in § 11-2605, if the court finds that the applicant is financially unable to pay for the testing. If the applicant is financially able to pay for the testing, the cost shall be borne by the applicant.

(2) The court may appoint counsel for an applicant for DNA testing pursuant to this section who is financially unable to obtain adequate representation.

(3) The provisions of Chapter 26 of Title 11 shall apply with equal force to applications made pursuant to this section.

(f) An order granting or denying relief under this section is a final order for purposes of appeal.

(May 17, 2002, D.C. Law 14-134, § 4, 49 DCR 408.)

Legislative history of Law 14-134. — For Law 14-134, see notes following § 22-4131.

CASE NOTES

ANALYSIS

Eligible material.

Purpose.

Reasonable probability.

Waiver of testing.

Eligible material.

Trace skin cells that murder defendant alleged might be present on items taken from crime scene were not “biological material” that was eligible for post-conviction DNA testing pursuant to the Innocence Protection Act (IPA); IPA defined “biological material,” in part, as “visible skin tissue,” but trace skin cells were not visible, in that they were microscopic and certainly not perceptible to normal, or even

exceptional, eyesight. *Hood v. United States*, 28 A.3d 553, 2011 D.C. App. LEXIS 553 (2011).

Purpose.

While the Innocence Protection Act (IPA) would afford a defendant an opportunity, prior to trial, to have further testing done after the government’s test results were received, post-conviction testing under the Act was intended to be limited to situations testing was not previously done, and has a reasonable probability of producing new evidence of actual innocence of the defendant. *U.S. v. Cuffey*, 132 WLR 385 (Super. Ct. 2004).

Reasonable probability.

Murder defendant, who sought DNA testing trace skin cells that he alleged might be present

on items taken from crime scene, failed to demonstrate a reasonable probability that DNA testing would produce non-cumulative evidence that would help establish that he was actually innocent, as necessary for defendant to be entitled to DNA testing of the items under the Innocence Protection Act (IPA); assuming that trace skin cells are present, and that the requested testing would result in recovery of a usable DNA profile of someone other than defendant or victim, defendant advanced no plausible scenario in which traces of a third person's skin cells years after the event would exonerate him, and even if another person somehow could have committed the murder, traces of a third person's skin cells on the items would not prove it. *Hood v. United States*, 28 A.3d 553, 2011 D.C. App. LEXIS 553 (2011).

Petitioner for postconviction relief was not entitled to have bloody shirt removed from victim of armed first-degree premeditated murder for testing under Innocence Protection Act (IPA); FBI expert had not tested petitioner's shirt because of belief that sheer amount of victim's blood on it would mask presence of DNA from any other contributor, and petitioner proffered only conjecture that comparison of DNA from shirt would yield exculpatory evidence. *Cuffey v. United States*, 976 A.2d 897, 2009 D.C. App. LEXIS 330 (2009).

Defendant was not entitled to post-conviction DNA testing of biological material found at murder scene and on his clothing, under provisions of Innocence Protection Act (IPA), even though defendant believed testing would support defense theory that another individual had committed murder, where testimony of forensic DNA examiner conclusively excluded probability that comparison defendant requested would establish any match between blood in hall and any blood on defendant's jacket, and there was no reasonable probability of testing producing evidence of defendant's actual innocence. *U.S. v. Cuffey*, 132 WLR 385 (Super. Ct. 2004).

Waiver of testing.

Defendant was not barred from requesting post-conviction relief pursuant to Innocence Protection Act (IPA) to obtain independent DNA testing on basis that he made knowing, intelligent, and voluntary waiver of DNA testing, in prosecution for child sexual abuse, as record did not support conclusion that defendant made a full voluntary waiver of such testing, given the absence of absence of a suitable colloquy in open court. *Veney v. United States*, 929 A.2d 448, 2007 D.C. App. LEXIS 472 (2007), modified by 936 A.2d 809, 2007 D.C. App. LEXIS 673 (D.C. 2007), reprinted as modified at 936 A.2d 811, 2007 D.C. App. LEXIS 840 (D.C. 2007).

§ 22-4134. Preservation of evidence.

(a) Law enforcement agencies shall preserve biological material that was seized or recovered as evidence in the investigation or prosecution that resulted in the conviction or adjudication as a delinquent for a crime of violence and not consumed in previous DNA testing for 5 years or as long as any person incarcerated in connection with that case or investigation remains in custody, whichever is longer.

(b) Notwithstanding subsection (a) of this section, the District of Columbia may dispose of the biological material after 5 years, if the District of Columbia notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for such person (or, if there is no counsel of record, the Public Defender Service), of the intention of the District of Columbia to dispose of the evidence and the District of Columbia affords such person not less than 180 days after the notification to make an application for DNA testing of the evidence.

(c) The District of Columbia shall not be required to preserve evidence that must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable. If practicable, the District of Columbia shall remove and preserve portions of this material evidence sufficient to permit future DNA testing before returning or disposing of it.

(d) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section with the intent to (1) impair the integrity of that evidence, (2) prevent that evidence

from being subjected to DNA testing, or (3) prevent the production or use of that evidence in an official proceeding, shall be subject to a fine of \$100,000 or imprisoned for not more than 5 years, or both.

(May 17, 2002, D.C. Law 14-134, § 5, 49 DCR 408.)

Legislative history of Law 14-134. — For Law 14-134, see notes following § 22-4131.

§ 22-4135. Motion to vacate a conviction or grant a new trial on the ground of actual innocence.

(a) A person convicted of a criminal offense in the Superior Court of the District of Columbia may move the court to vacate the conviction or to grant a new trial on grounds of actual innocence based on new evidence.

(b) Notwithstanding the time limits in any other provision of law, a motion for relief under this section may be made at any time.

(c) The motion shall set forth specific, non-conclusory facts:

(1) Identifying the specific new evidence;

(2) Establishing how that evidence demonstrates that the movant is actually innocent despite having been convicted at trial or having pled guilty; and

(3) Establishing why the new evidence is not cumulative or impeaching.

(d)(1) The motion shall include an affidavit by the movant, under penalty of perjury, stating that movant is actually innocent of the crime that is the subject of the motion, and that the new evidence was not deliberately withheld by the movant for purposes of strategic advantage.

(2) The denial of a motion for relief under this section shall not be admissible in any prosecution based on the filing of a false affidavit.

(e)(1) Unless the motion and files and records of the case conclusively show that the movant is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto.

(2) The court may appoint counsel for an indigent movant under this section pursuant to Chapter 26 of Title 11.

(3) The court may entertain and determine the motion without requiring production of the movant at the hearing.

(4) A movant shall be entitled to invoke the processes of discovery available under Superior Court Rules of Criminal Procedure or Civil Procedure, or elsewhere in the usages and principles of law if, and to the extent that, the judge, in the exercise of the judge's discretion and for good cause shown, grants leave to do so, but not otherwise.

(f) A motion for relief made pursuant to this section may be dismissed if the government demonstrates that it has been materially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the movant could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(g)(1) In determining whether to grant relief, the court may consider any relevant evidence, but shall consider the following:

- (A) The new evidence;
- (B) How the new evidence demonstrates actual innocence;
- (C) Why the new evidence is or is not cumulative or impeaching;
- (D) If the conviction resulted from a trial, and if the movant asserted a theory of defense inconsistent with the current claim of innocence, the specific reason the movant asserted an inconsistent theory at trial; and
- (E) If the conviction resulted from a guilty plea, the specific reason the movant pleaded guilty despite being actually innocent of the crime.

(2) If, after considering the factors in paragraph (1) of this subsection, the court concludes that it is more likely than not that the movant is actually innocent of the crime, the court shall grant a new trial.

(3) If, after considering the factors in paragraph (1) of this subsection, the court concludes by clear and convincing evidence that the movant is actually innocent of the crime, the court shall vacate the conviction and dismiss the relevant count with prejudice.

(4) If the conviction resulted from a plea of guilty, and other charges were dismissed as part of a plea agreement, the court shall reinstate any charges of which the defendant has not demonstrated that the defendant is actually innocent.

(h) The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant.

(i) An order entered on the motion is a final order for purposes of appeal.

(May 17, 2002, D.C. Law 14-134, § 6, 49 DCR 408; Dec. 10, 2009, D.C. Law 18-88, § 301, 56 DCR 7413.)

Effect of amendments. — D.C. Law 18-88, in subsec. (f), substituted “if the government demonstrates that it has been materially prejudiced” for “if it appears that the government has been prejudiced”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 301 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 301 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 14-134. — For Law 14-134, see notes following § 22-4131.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-404.

CASE NOTES

ANALYSIS

Discretion of court.
In general.
Recantation.

Discretion of court.

Trial court acted within its discretion in denying defendant's motion for a new murder trial based on ineffective assistance of counsel, pursuant to the statute governing remedies on a motion attacking a sentence, and on newly discovered evidence, pursuant to the Innocence

Protection Act (IPA), even though defendant argued in part that defense counsel failed to interview and call various persons to testify and that a testifying police officer had been indicted for tax fraud; trial court held a hearing at which it heard testimony from defendant, codefendant, and defense counsel, credited defense counsel's testimony about his conduct and reasonably concluded that he did not perform deficiently, and stated its basis for excluding each of the proposed witnesses. *Paige v. United States*, 25 A.3d 74, 2011 D.C. App. LEXIS 438

(2011), writ of certiorari denied by 132 S. Ct. 1605, 182 L. Ed. 2d 212, 2012 U.S. LEXIS 1302, 80 U.S.L.W. 3478 (U.S. 2012).

In general.

Recantation by government witness whose trial testimony was the only direct evidence implicating defendant in the robbery and murder, which recantation was offered by defendant in motion styled as one asserting “new evidence” amounting to proof of “actual innocence” under Innocence Protection Act (IPA), was not credible; recantation denied witness had any personal knowledge of the crime and recantation therefore related to defendant and all three accomplices rather than just defendant, but testimony of other trial witnesses provided circumstantial evidence corroborating recanting witness’ trial testimony as to involvement of two accomplices, and trial testimony of recanting witness’ brother contradicted assertion in recantation that the only knowledge recanting witness had about the crimes came from police and prosecutors. *Bell v. United States*, 871 A.2d 1199, 2005 D.C. App. LEXIS 153 (2005).

Judge faced with defendant’s post-conviction motion alleging recantation by government witness, styled as one asserting “new evidence” amounting to proof of “actual innocence” under Innocence Protection Act (IPA), could assess credibility of affidavit of recantation without evidentiary hearing, where judge had heard the testimony of the government witness and the other witnesses at trial. *Bell v. United States*, 871 A.2d 1199, 2005 D.C. App. LEXIS 153 (2005).

A judge faced with a defendant’s post-conviction motion alleging recantation by a government witness, styled as one asserting “new evidence” amounting to proof of “actual innocence” under the Innocence Protection Act (IPA), may discredit the recantation by the witness and thus terminate the inquiry into the defendant’s actual innocence. *Bell v. United States*, 871 A.2d 1199, 2005 D.C. App. LEXIS 153 (2005).

Recantation.

Even if victim’s letter to trial court constituted a recantation and her recantation was credited, defendant, who had been convicted of assault with intent to commit first-degree sexual abuse (AWICSA), failed to show that a manifest injustice occurred, as necessary to warrant vacation of his sentence, or that he was actually innocent, as necessary to warrant relief under Innocence Protection Act (IPA); evidentiary value of victim’s purported recantation was low, and would have, at best, been used to impeach her initial account of the events that a rape or attempted rape had occurred, defendant did not dispute that he seriously assaulted victim with a knife, nor could he, given the extent of her wounds as reflected in the medical records, victim’s initial account of what happened continued to carry weight, especially in light of its consistency with the other evidence, and a paramedic recalled that while victim was receiving treatment, she reported having been raped. *Meade v. United States*, 48 A.3d 761, 2012 D.C. App. LEXIS 322 (2012).

CHAPTER 41B. DNA SAMPLE COLLECTION.

Sec.

22-4151. Qualifying offenses.

§ 22-4151. Qualifying offenses.

(a) The following criminal offenses shall be qualifying offenses for the purposes of DNA collection under the DNA Analysis Backlog Elimination Act of 2000, approved December 19, 2000 (Pub. L. No. 106-546; 114 Stat. 2726) [42 U.S.C. §§ 14135-14135e]:

- (1) Any felony;
- (2) Any offense for which the penalty is greater than one year imprisonment;
- (3) § 22-1312(b) (lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years));
- (4) § 22-2201 (certain obscene activities involving minors);
- (5) § 22-3102 (sexual performances using minors);
- (6) § 22-3006 (misdemeanor sexual abuse);
- (7) § 22-3010.01 (misdemeanor sexual abuse of a child or minor); and
- (8) Attempt or conspiracy to commit any of the offenses listed in paragraphs (1) through (7) of this subsection.

(b) DNA collected by an agency of the District of Columbia shall not be searched for the purpose of identifying a family member related to the individual from whom the DNA sample was acquired.

(Nov. 3, 2001, D.C. Law 14-52, § 2, 48 DCR 5934; Oct. 26, 2001, D.C. Law 14-42, § 22, 48 DCR 7612; Oct. 17, 2002, D.C. Law 14-194, § 158, 49 DCR 5306; Dec. 10, 2009, D.C. Law 18-88, § 218, 56 DCR 7413.)

Effect of amendments. — D.C. Law 14-42, in par. (37), substituted “(misdemeanor sexual abuse) where the offense is committed against a minor,” for “(misdemeanor sexual abuse);”.

D.C. Law 14-194 made a nonsubstantive change in par. (45); added pars. ((45A), (45B), and (45C); and in par. (46), substituted “par. (45C)” for “par. (45)”.

D.C. Law 18-88 rewrote the section.

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of DNA Sample Collection Emergency Act of 2001 (D.C. Act 14-77, June 18,

Legislative history of Law 14-52. — Law 14-52, the “DNA Sample Collection Act of 2001”, was introduced in Council and assigned Bill No. 14-63, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 15, 2001, it was assigned Act No. 14-76 and transmitted to both Houses of Congress for its review. D.C. Law 14-52 became effective on November 10, 2001.

Legislative history of Law 14-194. — Law 14-194, the “Omnibus Anti-Terrorism Act of 2002”, was introduced in Council and assigned Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

CASE NOTES

In general.

Neither DNA Analysis Backlog Elimination Act (DNA Act) nor District of Columbia’s imple-

menting statute violated the Ex Post Facto Clause provisions of the federal constitution with respect to probationer convicted of two

counts of unarmed robbery, though implementing provision was signed after probationer was convicted and sentenced; neither provision was intended to be punitive, and neither provision criminalized any conduct of probationer committed prior to enactment, but rather created new regulatory system for maintenance of DNA samples in order to serve various legitimate law enforcement functions. *Johnson v. Quander*, 370 F.Supp.2d 79, 2005 U.S. Dist. LEXIS 5020 (2005), affirmed by 440 F.3d 489, 370 U.S. App. D.C. 167, 2006 U.S. App. LEXIS 6601 (2006).

DNA Analysis Backlog Elimination Act (DNA Act) and District of Columbia's implementing statute did not violate equal protection component of Fifth Amendment, despite claim by African-American probationer that both provisions had disparate impact on African-American males; there was no evidence that either provision was enacted with discriminatory intent, and compulsory taking of DNA samples was rationally related to legitimate state interests of preventing and solving past and future crimes. *Johnson v. Quander*, 370 F.Supp.2d 79, 2005 U.S. Dist. LEXIS 5020 (2005), affirmed by 440 F.3d 489, 370 U.S. App. D.C. 167, 2006 U.S. App. LEXIS 6601 (2006).

DNA Analysis Backlog Elimination Act (DNA Act) and District of Columbia's implementing statute did not violate procedural due process rights of probationer convicted of two counts of unarmed robbery, despite probationer's claim that Act had no internal guidelines for determining if a particular individual had actually been convicted of a qualifying offense, or procedures to challenge government's acquisition and testing of DNA samples; risk of erroneous

deprivation of liberty interest was minimal, as individual had to be convicted of a qualifying offense beyond a reasonable doubt, Act provided that if conviction was later overturned, the sample would be removed from the database, and Act explicitly limited how DNA samples could be used. *Johnson v. Quander*, 370 F.Supp.2d 79, 2005 U.S. Dist. LEXIS 5020 (2005), affirmed by 440 F.3d 489, 370 U.S. App. D.C. 167, 2006 U.S. App. LEXIS 6601 (2006).

Probationer convicted of two counts of unarmed robbery could not challenge requirement that he provide blood sample under DNA Analysis Backlog Elimination Act (DNA Act) and District of Columbia's implementing statute as violating substantive due process under the Fifth Amendment; taking of blood under the Act was a search and seizure under the Fourth Amendment, and analysis under that Amendment applied. *Johnson v. Quander*, 370 F.Supp.2d 79, 2005 U.S. Dist. LEXIS 5020 (2005), affirmed by 440 F.3d 489, 370 U.S. App. D.C. 167, 2006 U.S. App. LEXIS 6601 (2006).

Requiring probationer convicted of two counts of unarmed robbery to provide a DNA sample under the DNA Analysis Backlog Elimination Act (DNA Act) and District of Columbia's implementing statute was not illegal search in violation of the Fourth Amendment; probationer's privacy interest in his identity was diminished while on probation, such interest was outweighed by public interest in solving past and future crimes, and actual physical intrusion of obtaining blood sample was minimal. *Johnson v. Quander*, 370 F.Supp.2d 79, 2005 U.S. Dist. LEXIS 5020 (2005), affirmed by 440 F.3d 489, 370 U.S. App. D.C. 167, 2006 U.S. App. LEXIS 6601 (2006).

SUBTITLE IV. PREVENTION, SOLUTION, AND PUNISHMENT OF CRIMES.

CHAPTER 42. NATIONAL INSTITUTE OF JUSTICE APPROPRIATIONS.

Sec.

22-4201. Technical assistance and research.

§ 22-4201. Technical assistance and research.

There are authorized to be appropriated to the National Institute of Justice in each fiscal year (beginning with fiscal year 1998) such sums as may be necessary for the following activities:

(1) Research and demonstration projects, evaluations, and technical assistance to assess and analyze the crime problem in the District of Columbia, and to improve the ability of the criminal justice and other systems and entities in the District of Columbia to prevent, solve, and punish crimes.

(2) The establishment of a locally-based corporation or institute in the District of Columbia supporting research and demonstration projects relating to the prevention, solution, or punishment of crimes in the District of Columbia, including the provision of related technical assistance.

(Aug. 5, 1997, 111 Stat. 763, Pub. L. 105-33, § 11281.)

Prior Codifications. — 1981 Ed., § 22-4201.

Effective date. — Section 11721 of title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of

Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

CHAPTER 42A. CRIMINAL JUSTICE COORDINATING COUNCIL.

Subchapter I. General

Subchapter II. Authorization of Certain Federal Officials

Sec.

22-4231. Definitions.

22-4232. Establishment of the Criminal Justice Coordinating Council.

22-4233. Membership.

22-4234. Duties.

22-4235. Administrative support.

Sec.

22-4241. Authorizing federal officials.

22-4242. Annual reporting requirement.

22-4243. Federal contribution to Criminal Justice Coordinating Council.

22-4244. District of Columbia Criminal Justice Coordinating Council defined.

Subchapter I. General.

§ 22-4231. Definitions.

For the purposes of this chapter, the term:

(1) "Criminal Justice Coordinating Council" or "CJCC" means the Criminal Justice Coordinating Council for the District of Columbia that was established by and has been operating pursuant to the Memorandum of Agreement dated May 28, 1998.

(2) "Independent agency" shall have the meaning provided that term in § 1-603.01(13).

(Oct. 3, 2001, D.C. Law 14-28, § 1502, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see §§ 22, 23 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) addition of section, see § 1402 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — Law

14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

§ 22-4232. Establishment of the Criminal Justice Coordinating Council.

There is established as an independent agency within the District of Columbia government the Criminal Justice Coordinating Council.

(Oct. 3, 2001, D.C. Law 14-28, § 1503, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 1403 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 22-4231.

§ 22-4233. Membership.

(a) The Criminal Justice Coordinating Council shall include the following members:

- (1) Mayor, District of Columbia (Chair);
- (2) Chairman, Council of the District of Columbia;
- (3) Chairperson, Judiciary Committee, Council of the District of Columbia;
- (4) Chief Judge, Superior Court of the District of Columbia;
- (5) Chief, Metropolitan Police Department;
- (6) Director, District of Columbia Department of Corrections;
- (7) Corporation Counsel for the District of Columbia;
- (8) Director, Department of Human Services' Youth Services Administration;
- (9) Director, Public Defender Service;
- (10) Director, Pretrial Services Agency;
- (11) Director, Court Services and Offender Supervision Agency;
- (12) United States Attorney for the District of Columbia;
- (13) District of Columbia Corrections Trustee;
- (14) Director, Federal Bureau of Prisons;
- (15) Chair, United States Parole Commission;
- (16) Chair, District of Columbia Financial Responsibility and Management Assistance Authority ("Authority"); and
- (17) Board Member for Public Safety, Authority.

(b) Membership of the Authority members shall expire upon the dissolution of the Authority.

(Oct. 3, 2001, D.C. Law 14-28, § 1504, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 1404 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 22-4231.

§ 22-4234. Duties.

(a) The Criminal Justice Coordinating Council shall:

- (1) Make recommendations concerning the coordination of the activities and the mobilization of the resources of the member agencies in improving public safety in, and the criminal justice system of, the District of Columbia;
- (2) Cooperate with and support the member agencies in carrying out the purposes of the CJCC;
- (3) Define and analyze issues and procedures in the criminal justice system, identify alternative solutions, and make recommendations for improvements and changes in the programs of the criminal justice system;
- (4) Receive information from, and give assistance to, other District of Columbia agencies concerned with, or affected by, issues of public safety and the criminal justice system;
- (5) Make recommendations regarding systematic operational and infrastructural matters as are believed necessary to improve public safety in District of Columbia and federal criminal justice agencies;
- (6) Advise and work collaboratively with the Office of the Deputy Mayor

for Public Safety and Justice, Justice Grants Administration in developing justice planning documents and allocating grant funds;

(7) Select ex-officio members to participate in Criminal Justice Coordinating Council planning sessions and subcommittees as necessary to meet the organization's goals;

(8) Establish measurable goals and objectives for reform initiatives; and

(b) The CJCC shall also report, on an annual basis, on the status and progress of the goals and objectives referenced in subsection (a)(8) of this section, including any recommendations made by the CJCC and its subcommittees to the membership of the CJCC, the public, the Mayor, and the Council. The report shall be submitted to the Mayor and the Council within 90 days after the end of each fiscal year and shall be the subject of a public hearing before the Council during the annual budget process. The CJCC's budget and future funding requests shall also be the subject of a hearing before the Council during the annual budget process.

(Oct. 3, 2001, D.C. Law 14-28, § 1505, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 1405 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 22-4231.

§ 22-4235. Administrative support.

(a) There are authorized such funds as may be necessary to support the CJCC.

(b) The CJCC is authorized to hire staff and to obtain appropriate office space, equipment, materials, and services necessary to carry out its responsibilities.

(b-1) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the CJCC unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the CJCC[.] An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the CJCC for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The CJCC shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(c) The CJCC shall serve as the personnel authority for all employees of the CJCC. The CJCC shall exercise this authority consistent with Chapter 6 of Title 1.

(d) The CJCC may exercise procurement authority to carry out the respon-

sibilities of the CJCC, including contracting and contract oversight. The CJCC shall exercise this authority consistent with Unit A of Chapter 3 of Title 2 [§ 2-351.01 et seq.], except with regard to the powers and duties outlined in § 2-301.05(a), (b), (c), and (e).

(Oct. 3, 2001, D.C. Law 14-28, § 1506, 48 DCR 6981; Feb. 6, 2008, D.C. Law 17-108, § 211, 54 DCR 10993.)

Effect of amendments. — D.C. Law 17-108 added subsec. (b-1).

Emergency legislation. — For temporary (90 day) addition of section, see § 1406 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 22-4231.

Legislative history of Law 17-108. — Law 17-108, the “Jobs for D.C. Residents Amend-

ment Act of 2007”, was introduced in Council and assigned Bill No. 17-185 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-172 and transmitted to both Houses of Congress for its review. D.C. Law 17-108 became effective on February 6, 2008.

Subchapter II. Authorization of Certain Federal Officials.

§ 22-4241. Authorizing federal officials.

(a) *In general.* — Each of the individuals described in subsection (b) is authorized to serve on the District of Columbia Criminal Justice Coordinating Council, participate in the Council’s activities, and take such other actions as may be necessary to carry out the individual’s duties as a member of the Council.

(b) *Individuals described.* — The individuals described in this subsection are as follows:

- (1) The Director of the Court Services and Offender Supervision Agency for the District of Columbia.
- (2) The Director of the District of Columbia Pretrial Services Agency.
- (3) The United States Attorney for the District of Columbia.
- (4) The Director of the Bureau of Prisons.
- (5) The chair of the United States Parole Commission.
- (6) The Director of the United States Marshals Service.

(May 20, 2002, 116 Stat. 581, Pub. L. 107-180, § 2.)

§ 22-4242. Annual reporting requirement.

Not later than 60 days after the end of each calendar year, the District of Columbia Criminal Justice Coordinating Council shall prepare and submit to the President, Congress, and each of the entities of the District of Columbia government and federal government whose representatives serve on the Council a report describing the activities carried out by the Council during the year.

(May 20, 2002, 116 Stat. 581, Pub. L. 107-180, § 3.)

§ 22-4243. Federal contribution to Criminal Justice Coordinating Council.

There are authorized to be appropriated for fiscal year 2002 and each succeeding fiscal year such sums as may be necessary for a federal contribution to the District of Columbia to cover the costs incurred by the District of Columbia Criminal Justice Coordinating Council.

(May 20, 2002, 116 Stat. 581, Pub. L. 107-180, § 4.)

§ 22-4244. District of Columbia Criminal Justice Coordinating Council defined.

In this subchapter, the term “District of Columbia Criminal Justice Coordinating Council” means the entity established by the Council of the District of Columbia under subchapter I of this chapter.

(May 20, 2002, 116 Stat. 581, Pub. L. 107-180, § 5.)

CHAPTER 42B. HOMICIDE ELIMINATION.

Sec.
22-4251. Comprehensive Homicide Elimina-

tion Strategy Task Force estab-
lished.

§ 22-4251. Comprehensive Homicide Elimination Strategy Task Force established.

(a) There is established a Comprehensive Homicide Elimination Strategy Task Force ("Task Force"). The Task Force shall consider the most effective elements of a comprehensive plan that would lead to the elimination of murder in Washington.

(b) The Task Force shall be comprised of representatives appointed by the Mayor from the government, non-profit organizations, business, schools, victims services organizations, arts, social services, religious, mental health, organized labor, Advisory Neighborhood Commission, and criminology professionals. The Mayor shall designate 2 co-chairs of the Task Force, one each from the government and non-government sectors.

(c) The Task Force shall hold at least 3 public meetings, and shall present a report to the Mayor and the Council at the end of one year.

(Mar. 14, 2007, D.C. Law 16-262, § 501, 54 DCR 794.)

Legislative history of Law 16-262. — Law 16-262, the "Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-242, which was referred to Committee on Judiciary. The Bill was adopted on first

and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-618 and transmitted to both Houses of Congress for its review. D.C. Law 16-262 became effective on March 14, 2007.

SUBTITLE V. HARBOR, GAME AND FISH LAWS.

CHAPTER 43. GAME AND FISH LAWS.

Sec.

22-4301 to 22-4306. [Repealed].

22-4307. [Transferred].

22-4308 to 22-4327. [Repealed].

22-4328. Council's authority with respect to wild animals, fishing licenses, and migratory birds; exception; "wild animals" defined.

22-4329. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

Sec.

22-4330. Seizure of hunting and fishing equipment; sale at public auction and disposal of proceeds; disposal of property not sold at auction; payment of valid liens after sale.

22-4331. Penalties; prosecutions.

22-4332. Delegation of functions by Secretary of the Interior and Mayor; Council to make regulations; "Mayor" and "Secretary of the Interior" defined.

22-4333. Existing authority of Secretary of the Interior not impaired.

§§ 22-4301 to 22-4306. Prohibition and control of net fishing in Potomac River; catching and killing bass; "person" defined; sale of bass prohibited; sale and possession of shad or herring; sale of small striped bass; use of explosives and drugs in fishing prohibited [Repealed].

Repealed.

(Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8(a), (e).)

Prior Codifications. — 1981 Ed., §§ 22-1601 to 22-1606.

§ 22-4307. Penalties. [Transferred].

Transferred.

Editor's notes. — For present law, see § 22-4404.

§§ 22-4308 to 22-4327. Confiscation of fishing equipment used in violation of the law; sale and possession of woodcocks, squirrels, rabbits, wild chicks, wild geese, and certain game birds; inspection of premises to detect violation of game laws; trespassing for purposes of hunting; shooting or having guns in possession on a Sunday; killing or capturing game beyond District jurisdiction; compensation for persons securing convictions under game laws; killing game birds and permits therefor; hunting

squirrels, chipmunks and rabbits without a permit; killing of English sparrow or wild animal suffering from disease or injury; hunting or disbursing of ducks, geese, and waterfowl; sale, possession, or purchase of certain types of birds prohibited; license for certain scientific purposes; sale of birds raised in captivity or for propagation [Repealed].

Repealed.

(Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8(a)-(d).)

Prior Codifications. — 1981 Ed., §§ 22-1608 to 22-1627.

§ 22-4328. Council's authority with respect to wild animals, fishing licenses, and migratory birds; exception; "wild animals" defined.

The Council of the District of Columbia is authorized to restrict, prohibit, regulate, and control hunting and fishing and the taking, possession, and sale of wild animals in the District; provided, that the District assents to the provisions of the Dingell-Johnson Sport Fish Restoration Act, approved August 9, 1950 (64 Stat. 430; 16 U.S.C. §§ 777-777n), the Pittman-Robertson Wildlife Restoration Act, approved September 2, 1937 (50 Stat. 917; 16 U.S.C. §§ 669-669k), and 18 U.S.C. § 701, including a prohibition against the diversion of fishing license fees paid by sport fishermen for any purpose other than the administration of the District's fish and wildlife agency; provided further, that nothing herein contained shall authorize the Council to prohibit, restrict, regulate, or control the killing, capture, purchase, sale, or possession of migratory birds as defined in regulations issued pursuant to the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. §§ 703-712) and taken for scientific, propagating, or other purposes under permits issued by the Secretary of the Interior; and provided further, that nothing herein contained shall authorize the Council to prohibit, restrict, regulate, or control the sale or possession of wild animals taken legally in any state, territory or possession of the United States or in any foreign country, or produced on a game farm, except as may be necessary to protect the public health or safety. As used in this section the term "wild animals" includes, without limitation, mammals, birds, fish, and reptiles not ordinarily domesticated.

(Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 1; Sept. 24, 2010, D.C. Law 18-223, § 6082, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 22-1628.
1973 Ed., § 22-1628.

Effect of amendments. — D.C. Law 18-223

substituted "provided, that the District assents to the provisions of the Dingell-Johnson Sport Fish Restoration Act, approved August 9, 1950 (64 Stat. 430; 16 U.S.C. §§ 777-777n), the Pitt-

man-Robertson Wildlife Restoration Act, approved September 2, 1937 (50 Stat. 917; 16 U.S.C. §§ 669-669k), and 18 U.S.C. § 701, including a prohibition against the diversion of fishing license fees paid by sport fishermen for any purpose other than the administration of the District's fish and wildlife agency" for "provided, that nothing herein contained shall authorize the Council to impose any requirement for a fishing license or fee of any nature whatsoever".

Emergency legislation. — For temporary (90 day) amendment of section, see § 6082 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 6081 of D.C. Law 18-223 provided that subtitle I of title

VI of the act may be cited as the "Assent to the Dingell-Johnson Sport Fish Restoration Act Amendment Act of 2010".

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(204) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 22-4329. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

Authorized officers and employees of the government of the United States or of the government of the District of Columbia are, for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Council of the District of Columbia under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation, or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall, or cold-storage plant. No person shall refuse to permit any such inspection.

(Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 2.)

Prior Codifications. — 1981 Ed., § 22-1629.

1973 Ed., § 22-1629.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(204) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 22-4330. Seizure of hunting and fishing equipment; sale at public auction and disposal of proceeds; disposal of property not sold at auction; payment of valid liens after sale.

(a) All rifles, shotguns, ammunition, bows, arrows, traps, seines, nets, boats, and other devices of every nature or description used by any person within the District of Columbia when engaged in killing, ensnaring, trapping, or capturing any wild bird, wild mammal, or fish contrary to this chapter or any regulation made pursuant to this chapter shall be seized by any police officer, or any designated civilian employee of the Metropolitan Police Department, upon the arrest of such person on a charge of violating any provision of this chapter or any regulations made pursuant thereto, and be delivered to the Mayor. If the person so arrested is acquitted, the property so seized shall be returned to the person in whose possession it was found. If the person so arrested is convicted, the property so seized shall, in the discretion of the court, be forfeited to the District of Columbia, and be sold at public auction, the proceeds from such sale to be deposited in the Treasury to the credit of the District of Columbia. If any item of such property is not purchased at such auction, it shall be disposed of in accordance with regulations prescribed by the District of Columbia Council.

(b) If any property seized under the authority of this section is subject to a lien which is established by intervention or otherwise to the satisfaction of the court as having been created without the lienor's having any notice that such property was to be used in connection with a violation of any provision of this chapter or any regulation made pursuant thereto, the court, upon the conviction of the accused, may order a sale of such property at public auction. The officer conducting such sale, after deducting proper fees and costs incident to the seizure, keeping, and sale of such property, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof.

(Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 3; June 12, 1999, D.C. Law 12-284, § 5, 46 DCR 1328.)

Cross references. — Return of property by property clerk, see § 5-119.16.

Prior Codifications. — 1981 Ed., § 22-1630.

1973 Ed., § 22-1630.

Temporary Amendment of Section. — Section 5 of D.C. Law 12-282 inserted "or any designated civilian employee of the Metropolitan Police Department" in the first sentence of (a).

Section 13(b) of D.C. Law 12-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary

provision, on an emergency basis, making available for a reasonable fee the name, address, date of birth, occupation, and photograph of persons convicted of violation of §§ 22-2701 or 22-2703 1981 Ed., see § 2 of the Safe Streets Anti-Prostitution Emergency Amendment Act of 1996 (D.C. Act 11-252, April 15, 1996, 43 DCR 2139).

For temporary amendment of section, see § 3(a) of the Safe Streets Anti-Prostitution Emergency Amendment Act of 1996 (D.C. Act 11-252, April 15, 1996, 43 DCR 2139).

For temporary amendment of section, see § 5 of the Metropolitan Police Department

Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 5 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 5 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 12-282. — Law 12-282, the “Metropolitan Police Department Civilianization Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-709. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-282 became effective on May 28, 1999.

Legislative history of Law 12-284. — Law 12-284, the “Metropolitan Police Department Civilianization Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-710, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and

December 15, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-284 became effective on June 12, 1999.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(205) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 22-4331. Penalties; prosecutions.

(a) Any person convicted of violating any provision of this chapter, or any regulation made pursuant to this chapter, shall be fined not more than \$300 or imprisoned not more than 90 days, or both.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any Assistant Corporation Counsel.

(Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 4; May 21, 1994, D.C. Law 10-119, § 11(a), 41 DCR 1639.)

Prior Codifications. — 1981 Ed., § 22-1631.

1973 Ed., § 22-1631.

Legislative history of Law 10-119. — Law 10-119, the “Anti-Gender Discriminatory Language Criminal Offenses Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-332, which was referred to the

Committee on the Judiciary. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-209 and transmitted to both Houses of Congress for its review. D.C. Law 10-119 became effective on May 21, 1994.

§ 22-4332. Delegation of functions by Secretary of the Interior and Mayor; Council to make regulations; “Mayor” and “Secretary of the Interior” defined.

(a) The Secretary of the Interior and the Mayor, respectively, are authorized

to delegate any of the functions to be performed by them under the authority of this chapter.

(b) The Council of the District of Columbia is authorized to make such regulations as may be necessary to carry out the purpose of this chapter; provided, that any regulations issued pursuant to this chapter shall be subject to the approval of the Secretary of the Interior insofar as they involve any areas or waters of the District of Columbia under the appropriate administrative jurisdiction.

(c) As used in this chapter the word "Mayor" means the Mayor of the District of Columbia or the appropriate designated agent or agents, and the words "Secretary of the Interior" means the Secretary of the Interior or the appropriate designated agent or agents.

(Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 5; May 21, 1994, D.C. Law 10-119, § 11(b), 41 DCR 1639.)

Prior Codifications. — 1981 Ed., § 22-1632.

1973 Ed., § 22-1632.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4331.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(204) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 22-4333. Existing authority of Secretary of the Interior not impaired.

Nothing in this chapter or in any regulation promulgated by the Council of the District of Columbia under the authority of this chapter shall in any way impair the existing authority of the Secretary of the Interior to control and manage fish and wildlife on the land and waters in the District of Columbia under the Secretary of the Interior's administrative jurisdiction.

(Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 6; May 21, 1994, D.C. Law 10-119, § 11(c), 41 DCR 1639.)

Prior Codifications. — 1981 Ed., § 22-1633.

1973 Ed., § 22-1633.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4331.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(204) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 44. HARBOR REGULATIONS.

Sec.

22-4401. Harbor regulations; authority vested in Council; compliance with federal law required; District and federal statutes and regulations supplemented.

Sec.

22-4402. Throwing or depositing matter in Potomac River.

22-4403. Deposits of deleterious matter in Rock Creek or Potomac River.

22-4404. Penalties for violation of § 22-4403.

§ 22-4401. Harbor regulations; authority vested in Council; compliance with federal law required; District and federal statutes and regulations supplemented.

The Council of the District of Columbia is hereby vested with authority to make harbor regulations for the entire water-front of the city within the District of Columbia, to alter and amend the same from time to time as it may find necessary; provided, that nothing in this section shall be construed or applied to require or excuse noncompliance with any provision of any federal law or regulation. This section shall not supersede but shall supplement all statutes and regulations of the District of Columbia and the United States in which similar conduct is prohibited or regulated.

(Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 895; June 30, 1902, 32 Stat. 535, ch. 1329; Feb. 8, 1904, 33 Stat. 11, ch. 152, §§ 1, 2; June 6, 1924, ch. 270, § 9; June 15, 1934, 48 Stat. 963, ch. 536; July 19, 1952, 66 Stat. 790, ch. 949, § 1; Sept. 28, 1979, D.C. Law 3-25, § 4, 26 DCR 497.)

Cross references. — Fish wharf and market, see § 37-205.01.

Jurisdiction and control of wharves, see §§ 10-501.01 and 10-501.02.

Metropolitan police enforcement harbor regulations, see § 5-105.05.

Publication and effect of rules and regulations, see §§ 5-103.01 and 5-103.02.

Prior Codifications. — 1981 Ed., § 22-1701.

1973 Ed., § 22-1701.

Legislative history of Law 3-25. — Law 3-25, the "Harbor and Boating Safety Act of 1979," was introduced in Council and assigned Bill No. 3-61. The Bill was adopted on first and second readings on June 5, 1979 and June 19, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-70 and transmitted to both Houses of Congress for its review.

New implementing regulations. — New implementing regulations: Pursuant to this section, the following new regulations were adopted in 1979: The "Harbor and Boating Safety Act of 1979" (D.C. Law 3-25, Sept. 28, 1979, 26 DCR 497).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(206) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Vessel moorings.

Mooring barge lengthwise under span of highway bridge over Potomac river so that it occupied 93 feet of a 133-foot wide passage violated Harbor Regulation of the District of Columbia Code requiring that moored vessel be secured so as to keep long axis of vessel parallel with that of the channel. D.C. Code § 22-1701 et seq. *Petersen v. Head Constr. Co.*, 367 F. Supp. 1072, 1973 U.S. Dist. LEXIS 10831 (1973).

Where defendant charterer's unauthorized and improper mooring of barge in Potomac river in violation of statutes and regulations could have contributed to collision occurring when barge was struck by planing hull boat, charterer was liable for injuries sustained by occupants of boat. Inland Rules, art. 11, 33 U.S.C. § 180; D.C. Code § 22-1701; Rivers and Harbors Appropriation Act of 1899, §§ 10, 15, 33 U.S.C. §§ 403, 409. *Petersen v. Head Constr. Co.*, 367 F. Supp. 1072, 1973 U.S. Dist. LEXIS 10831 (1973).

In action for injuries sustained by owner and operator of planing hull boat in collision with barge chartered and operated by defendant roadway construction firm, evidence established that hull boat's speed, of 15 miles per hour was excessive due to darkness on river, harsh shadows under bridge where collision occurred and possible debris in river, that plaintiff failed to keep proper lookout and that defendant's barge was obstructing passage under bridge, had not obtained authorization for

mooring from Corps of Engineers or Coast Guard and that barge was not equipped with standard white light as prescribed for vessels at anchor by the rules of the road. Inland Rules, 33 U.S.C. §§ 151-232; art. 11, 33 U.S.C. § 180; 18 U.S.C. § 1333; D.C. Code § 22-1701 et seq.; Rivers and Harbors Appropriation Act of 1899, §§ 9-17, 19, 20, 33 U.S.C. §§ 401, 403, 404, 406, 407, 408, 409, 411-415, 418 and §§ 407a, 410, 417, 419; Rivers and Harbors Appropriation Act of 1902, § 10, 33 U.S.C. § 402; Rivers and Harbors Appropriation Act of 1912, § 1, 33 U.S.C. § 405. *Petersen v. Head Constr. Co.*, 367 F. Supp. 1072, 1973 U.S. Dist. LEXIS 10831 (1973).

Custom did not justify barge owner's sole use of yellow cautionary lights on barge moored under bridge in Potomac river, in view of explicit law requiring white lantern and red lights. Inland Rules, art. 11, 33 U.S.C. § 180; D.C. Code § 22-1701; Rivers and Harbors Appropriation Act of 1899, §§ 10, 15, 33 U.S.C. §§ 403, 409. *Petersen v. Head Constr. Co.*, 367 F. Supp. 1072, 1973 U.S. Dist. LEXIS 10831 (1973).

Charterer of barge moored in Potomac river in violation of law failed to demonstrate that such violation could not have been one of causes of collision occurring when barge was struck by planing hull boat. Inland Rules, art. 11, 33 U.S.C. § 180; D.C. Code § 22-1701; Rivers and Harbors Appropriation Act of 1899, §§ 10, 15, 33 U.S.C. §§ 403, 409. *Petersen v. Head Constr. Co.*, 367 F. Supp. 1072, 1973 U.S. Dist. LEXIS 10831 (1973).

§ 22-4402. Throwing or depositing matter in Potomac River.

(a) It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below highwater mark, unless for the purpose of making a wharf, after permission has been obtained from the Mayor of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.

(b) It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.

(c) Nothing in this section contained shall be construed to interfere with the

work of improvement in or along the said river and harbor under the supervision of the United States government.

(d) Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding \$100, or by imprisonment not exceeding 6 months, or both, in the discretion of the court.

(Feb. 3, 1913, 37 Stat. 656, ch. 25.)

Cross references. — Discharge of pollutants from vessels or onshore or offshore facilities, see § 8-103.08.

Prior Codifications. — 1981 Ed., § 22-1702.

1973 Ed., § 22-1702.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 22-4403. Deposits of deleterious matter in Rock Creek or Potomac River.

No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same.

(Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 901.)

Section references. — This section is referred to in § 22-1404.

1973 Ed., § 22-1703.

Prior Codifications. — 1981 Ed., § 22-1703.

CASE NOTES

ANALYSIS

Legislative intent.
Water pollution.

Legislative intent.

In enacting Code, § 901 (D.C. Code 1929, T. 6, § 306), prohibiting the discharge of waste products into the Potomac river, it was the object of Congress, not simply to provide for the protection of fish in the river, but to keep the river as free from pollution as possible. Holden

v. U.S., 24 App.D.C. 318, 1904 U.S. App. LEXIS 5339 (1904).

Water pollution.

Where a construction company locates its tanks on the banks of a navigable stream, within the limits of a city, and in the vicinity of boathouses and docks, knowing, or chargeable with knowledge, that if any of the substance contained in the tanks escapes it will find its way into the river and interfere with public use and enjoyment of the river, it is liable for

injuries to boats at one of such boathouses caused by escaping petroleum residuum, irrespective of the question of negligence, especially where it does not appear that it was necessary to locate the tanks on the banks of the river and a statute exists prohibiting the pollution of the river by waste products. *Brennan Const. Co. v. Cumberland*, 29 App.D.C. 554, 1907 U.S. App. LEXIS 5484 (1907).

A person who places some potentially dangerous substance upon his property—something which, if permitted to escape, is certain to injure others—must make good the damages occasioned by the escape of such substance, regardless of the question of negligence. *Brennan Const. Co. v. Cumberland*, 29 App.D.C. 554, 1907 U.S. App. LEXIS 5484 (1907).

In a prosecution in the police court of the superintendent of a gaslight company for allowing water mixed with tar and oil from the works of his company to flow into the Potomac river, in violation of Code, § 901 (D.C. Code 1929, T. 6, § 306), providing that no person shall allow any tar, oil, etc., or any waste products of any gasworks to flow into the Potomac river, that court properly adopts a proposition of law (a jury trial having been waived), submitted on behalf of the prosecution, to the effect that, if the defendant violated the statute, he was guilty, and properly rejects propositions of law, submitted by the defendant, to the effect that the defendant was to be acquitted if the product so allowed by him to escape into the river was not injurious to fish, or if the accused had used reasonable diligence in eliminating the waste

products of tar and oil from the water he had so discharged, or if he had so discharged only so much of such waste product as was required to be discharged for the necessary operation of the gasworks, and that the statute does not apply to the necessary operation of such gasworks. *Holden v. U.S.*, 24 App.D.C. 318, 1904 U.S. App. LEXIS 5339 (1904).

Code, § 901 (D.C. Code 1929, T. 6, § 306), prohibiting the discharge of waste products of gasworks and other works into the Potomac river within the District of Columbia, being plain and unambiguous in its meaning, the fact, if it be a fact, that its literal enforcement will virtually render it impracticable to manufacture gas for the use of the city of Washington, will not justify the court in refusing to so enforce it. *Holden v. U.S.*, 24 App.D.C. 318, 1904 U.S. App. LEXIS 5339 (1904).

Although failure of employee of university, which contracted with independent contractor for erection of oil power plant, to turn off oil pumps that he had turned on or to turn on transfer valve resulted in oil spillage into river, such failure did not render university criminally liable under Rivers and Harbors Appropriation Act where employee turned pumps on at direction of independent mechanical contractor and was not requested to turn pumps off or instructed as to consequences of leaving pumps on without turning on transfer valve. *Rivers and Harbors Appropriation Act of 1899*, § 13, 33 U.S.C. § 407; D.C. Code § 22-1703. *United States v. Georgetown University*, 331 F. Supp. 69, 1971 U.S. Dist. LEXIS 11782 (1971).

§ 22-4404. Penalties for violation of § 22-4403.

Any person who shall violate any provision of § 22-4403 shall for each such offense be fined not more than \$300 or imprisoned not more than 90 days, or both.

(Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 902; Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 7.)

Prior Codifications. — 1981 Ed., § 22-1703a.

1973 Ed., § 22-1703a.

SUBTITLE VI. REGULATION AND POSSESSION OF WEAPONS.

CHAPTER 45. WEAPONS AND POSSESSION OF WEAPONS.

Sec.	Sec.
22-4501. Definitions.	22-4509. Dealers of weapons to be licensed.
22-4502. Additional penalty for committing crime when armed.	22-4510. Licenses of weapons dealers; records; by whom granted; conditions.
22-4502.01. Gun free zones; enhanced penalty.	22-4511. False information in purchase of weapons prohibited.
22-4503. Unlawful possession of firearm.	22-4512. Alteration of identifying marks of weapons prohibited.
22-4503.01. Unlawful discharge of a firearm.	22-4513. Exceptions.
22-4503.02. Prohibition of firearms from public or private property.	22-4514. Possession of certain dangerous weapons prohibited; exceptions.
22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.	22-4515. Penalties.
22-4504.01. Authority to carry firearm in certain places and for certain purposes.	22-4515a. Manufacture, transfer, use, possession, or transportation of Molotov cocktails, or other explosives for unlawful purposes, prohibited; definitions; penalties.
22-4504.02. Lawful transportation of firearms.	22-4516. Severability.
22-4505. Exceptions to § 22-4504.	22-4517. Dangerous articles; definition; taking and destruction; procedure.
22-4506. [Repealed].	
22-4507. Certain sales of pistols prohibited.	
22-4508. Transfers of firearms regulated.	

§ 22-4501. Definitions.

For the purposes of this chapter, the term:

(1) "Crime of violence" shall have the same meaning as provided in § 23-1331(4).

(2) "Dangerous crime" means distribution of or possession with intent to distribute a controlled substance. For the purposes of this definition, the term "controlled substance" means any substance defined as such in the District of Columbia Official Code or any Act of Congress.

(2A) "Firearm" means any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive. The term "firearm" shall not include:

(1) A destructive device as that term is defined in § 7-2501.01(7);

(2) A device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(3) A device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(3) "Knuckles" means an object, whether made of metal, wood, plastic, or other similarly durable material that is constructed of one piece, the outside part of which is designed to fit over and cover the fingers on a hand and the inside part of which is designed to be gripped by the fist.

(4) "Machine gun" shall have the same meaning as provided in § 7-2501.01(10).

(5) "Person" includes individual, firm, association, or corporation.

(6) "Pistol" shall have the same meaning as provided in § 7-2501.01(12).

(6A) "Place of business" shall have the same meaning as provided in § 7-2501.01(12A).

(7) "Playground" means any facility intended for recreation, open to the public, and with any portion of the facility that contains one or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards.

(7A) "Registrant" means a person who has registered a firearm pursuant to Unit A of Chapter 25 of Title 7.

(8) "Sawed-off shotgun" shall have the same meaning as provided in § 7-2501.01(15).

(9) "Sell" and "purchase" and the various derivatives of such words shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

(9A) "Shotgun" shall have the same meaning as provided in § 7-2501.01(16).

(10) "Video arcade" means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines.

(11) "Youth center" means any recreational facility or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(July 8, 1932, 47 Stat. 650, ch. 465, § 1; Dec. 27, 1967, 81 Stat. 736, Pub. L. 90-226, title V, § 501; Dec. 1, 1982, D.C. Law 4-164, § 601(e), 29 DCR 3976; July 28, 1989, D.C. Law 8-19, § 3(a), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(a), 37 DCR 24; Aug. 18, 1994, D.C. Law 10-150, § 3(a), 41 DCR 2594; Aug. 20, 1994, D.C. Law 10-151, § 109, 41 DCR 2608; May 23, 1995, D.C. Law 10-257, § 401(c), 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 4, 43 DCR 528; June 3, 1997, D.C. Law 11-275, § 8, 44 DCR 1408; June 8, 2001, D.C. Law 13-300, § 3, 47 DCR 7037; Oct. 17, 2002, D.C. Law 14-194, § 155, 49 DCR 5306; Apr. 24, 2007, D.C. Law 16-306, § 223(a), 53 DCR 8610; May 15, 2009, D.C. Law 17-390, § 3(a), 55 DCR 11030; May 20, 2009, D.C. Law 17-388, § 2(a), 56 DCR 1162.)

Cross references. — Crimes of violence defined, firearms control law, see § 7-2501.01.

Educational and meritorious good time credits, minimum sentence for violent crimes, see § 24-221.01b.

Eligibility for boot camp program, conviction under this section, see § 24-921.

Firearms regulations, see § 1-303.43.

Minimum sentences, crimes specified in this section, see § 24-403.

Murder in the first degree, sentencing, aggravating circumstances, see § 22-2104.01.

Parole eligibility, convictions under this section, see § 24-408.

Repeat offenders, crimes of violence, increased penalties, see § 22-1804a.

Sentencing, supervised release, and good time credit for felonies under this section committed on or after August 5, 2000, see § 24-403.01.

Section references. — This section is referred to in §§ 22-3204, 24-4504.

Prior Codifications. — 1981 Ed., § 22-3201.

1973 Ed., § 22-3201.

Effect of amendments. — D.C. Law 13-300, in subsec. (g), deleted "if the offense is punishable by imprisonment for more than 1

year” following “controlled substance” in the first sentence.

D.C. Law 14-194, in subsec. (f), substituted “manslaughter, an act of terrorism, manufacture or possession of a weapon of mass destruction, use, dissemination, or detonation of a weapon of mass destruction,” for “manslaughter,”.

D.C. Law 16-306 rewrote subsec. (f), which had read as follows: “(f) ‘Crime of violence’, as used in this chapter, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, an act of terrorism, manufacture or possession of a weapon of mass destruction, use, dissemination, or detonation of a weapon of mass destruction, first degree sexual abuse, second degree sexual abuse, or child sexual abuse, mayhem, maliciously disfiguring another, abduction, kidnapping, burglary, robbery, housebreaking, any assault with intent to kill, commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse, or robbery, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment in the penitentiary, arson, or extortion or blackmail accompanied by threats of violence or aggravated assault.”

D.C. Law 17-390 rewrote the section.

D.C. Law 17-388 added pars. (2A), (6A), (7A), and (9A); and rewrote pars. (4), (6), and (8).

Emergency legislation. — For temporary amendment of section, see § 109 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary (90 day) amendment of section, see § 223(a) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 223(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 223(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 223(a) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

For temporary (90 day) amendment of section, see § 3(a) of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) amendment of section, see §§ 3(a) and (4) of Second Firearms Control Congressional Review Emergency

Amendment Act of 2008 (D.C. Act 17-601, December 12, 2008, 56 DCR 9).

For temporary (90 day) amendment of section, see § 2(a) of Inoperable Pistol Emergency Amendment Act of 2008 (D.C. Act 17-652, January 6, 2009, 56 DCR 927).

For temporary (90 day) amendment of section, see § 2(a) of Inoperable Pistol Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-24, March 16, 2009, 56 DCR 2309).

For temporary (90 day) amendment of section, see § 302(a) of Crime Bill Emergency Amendment Act of 2009 (D.C. Act 18-129, June

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-19. — Law 8-19, the “Law Enforcement Temporary Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-184, which was retained by Council. The Bill was adopted on first and second readings on March 7, 1989 and April 4, 1989, respectively. Signed by the Mayor on April 17, 1989, it was assigned Act No. 8-22 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-120. — Law 8-120, the “Law Enforcement Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-185, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 1989 and December 19, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-129 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-150. — For legislative history of D.C. Law 10-150, see Historical and Statutory Notes following § 22-4502.01.

Legislative history of Law 10-151. — Law 10-151, the “Omnibus Criminal Justice Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Legislative history of Law 10-257. — Law 10-257, the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill

No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

Legislative history of Law 11-119. — Law 11-119, the “Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-484, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-198 and transmitted to both Houses of Congress for its review. D.C. Law 11-119 became effective May 17, 1996.

Legislative history of Law 11-275. — Law 11-275, the “Second Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Con-

gress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Legislative history of Law 13-300. — Law 13-300, the “Distribution of Marijuana Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-240, which was referred to the Committee of the Judiciary. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 27, 2000, it was assigned Act No. 13-395 and transmitted to both Houses of Congress for its review. D.C. Law 13-300 became effective on June 8, 2001.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 22-4151.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 22-3302.

Legislative history of Law 17-390. — For Law 17-390, see notes following § 22-3312.02.

Legislative history of Law 17-388. — Law 17-388, the “Inoperable Pistol Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-593 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 16, 2009, it was assigned Act No. 17-690 and transmitted to both Houses of Congress for its review. D.C. Law 17-388 became effective on May 20, 2009.

CASE NOTES

ANALYSIS

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Arrest.

Under circumstances including fact that officer saw bulge under suspect's left arm and feared it was a gun after he touched the bulge, frisk of suspect which revealed presence of a pistol was reasonable. U.S. Const. Amend. 4. *Lee v. United States*, 402 A.2d 840, 1979 D.C. App. LEXIS 387 (1979).

Construction and application.

Section of District of Columbia Code empowering council to make all regulations deemed necessary for regulation of firearms, a section of act prohibiting the killing of wild birds and wild animals, conferred power to regulate firearms

for the protection of people as well as wildlife. D.C. Code §§ 1-227, 22-3201 to 22-3217. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Unsuccessful efforts by board of commissioners to obtain legislation supplementing 1932 gun control law enacted for the District of Columbia, and congressional inaction on the commissioners' requests, did not indicate doubt as to commissioners' authority to adopt gun control regulations and did not obliterate authority derived from 1906 statute authorizing gun control regulations. D.C. Code §§ 1-227, 22-3201 to 22-3217. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Statute that prohibits possession of unregistered firearms is not limited to firearms that are operable; statute clearly includes within its scope inoperable weapons that may be redesigned, remade or readily converted or restored to operability. D.C. Code 1981, § 6-2311(a). *Townsend v. United States*, 559 A.2d 1319, 1989 D.C. App. LEXIS 114 (1989).

Intent of Home Rule Act provision, which prohibits District of Columbia Council from

enacting any act with respect to any provision of any law codified in title of District of Columbia Code relating to crimes and treatment of prisoners during 24 months following date that members of Council first elected pursuant to such act were to take office, was merely to place time constraint on Council's authority to make changes in local criminal statutes until such time as local law revision commission could make a complete reevaluation and revision of District's criminal code. D.C. Code §§ 1-147(a)(9), 22-3201 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Continuation of emergency conditions does not justify enactment of second or successive emergency criminal enactments. The second emergency act amending District of Columbia criminal statute is invalid. *United States v. Anderson*, 118 WLR 491 (Super. Ct., May 1, 1990).

Crimes of violence.

Offense of assault with significant bodily injury was not a crime of violence, and thus, defendant should not have been charged with assault with significant bodily injury while armed or with a related count of possessing a firearm during a crime of violence (PFCV), which increased his potential term of imprisonment. *Colter v. United States*, 37 A.3d 282, 2012 D.C. App. LEXIS 63 (2012), writ of certiorari denied by 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8443, 81 U.S.L.W. 3229 (U.S. 2012).

Offense of assault on a police officer is among "crimes of violence" upon which liability for possession of a firearm during a crime of violence or dangerous crime (PFCV) must be based. D.C. Code 1981, §§ 22-3201(f), 22-3204(b). *Holt v. United States*, 675 A.2d 474, 1996 D.C. App. LEXIS 67 (1996), writ of certiorari denied by 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117, 1996 U.S. LEXIS 5456, 65 U.S.L.W. 3261 (1996).

Offense of assault of police officer with dangerous weapon could be predicate offense for conviction of possession of firearm while committing crime of violence even though assault on police officer with dangerous weapon was not specifically listed as crime of violence. D.C. Code 1981, §§ 22-3201(f), 22-3204(b). *Parks v. United States*, 627 A.2d 1, 1993 D.C. App. LEXIS 135 (1993).

Armed robbery and assault with intent to commit robbery while armed were armed "crimes of violence" within statute prescribing mandatory minimum sentence for such crimes. D.C. Code §§ 22-3201, 33-3202, 22-3202(a)(2). *United States v. Hilliard*, 366 A.2d 437, 1976 D.C. App. LEXIS 413 (1976).

Dangerous weapon.

For purposes of crime of attempted possession of a prohibited weapon (APPW), an object

is a "dangerous weapon" if it is known to be likely to produce death or great bodily injury' in the manner it is used, intended to be used, or threatened to be used. *Alfaro v. United States*, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

Automobile operated with gross negligence is not a "dangerous weapon" as required to support conviction for involuntary manslaughter while armed. D.C. Code 1981, § 22-3202(a). *Reed v. United States*, 584 A.2d 585, 1990 D.C. App. LEXIS 328 (1990).

Instructions.

Violation of defendant's Fifth Amendment right to due process and Sixth Amendment right to trial by jury, relating to omission, from instructions on possession of prohibited weapon, of characteristics that constitute a machine gun and that the weapon must be operable, did not constitute plain error, where testimony at trial established that the weapon was an operable machine gun; detective who recovered the gun testified that its magazine contained 15 rounds of ammunition and that the gun test-fired approximately 13 times without being reloaded. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Definition of dangerous or deadly weapon must be included in jury instruction on "while armed" component of offense only when object or instrument alleged to be a weapon is not one of weapons specifically listed in statute permitting enhanced penalty if offense is committed while defendant is armed. D.C. Code 1981, § 22-3202(a). *Dade v. United States*, 663 A.2d 547, 1995 D.C. App. LEXIS 287 (1995).

Any pistol or other firearm was, by statutory definition, a dangerous or deadly weapon, and jury was not required to find specifically that particular pistol was a dangerous or deadly weapon to find defendant guilty of kidnapping while armed, although defendant alleged that weapon was not loaded; therefore, defendant was not entitled to instruction on "while armed" component of offense which included definition of dangerous or deadly weapon. D.C. Code 1981, § 22-3202(a). *Dade v. United States*, 663 A.2d 547, 1995 D.C. App. LEXIS 287 (1995).

Jury instruction on statutory definition of pistol was not required in trial for second-degree murder while armed and possession of firearms during crime of violence, where neither offense required proof that weapon used was pistol. D.C. Code 1981, §§ 22-2403, 22-3202, 22-3204(b). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

Jury instruction on statutory definition of pistol was not required for jury instruction on charge of carrying pistol without license in that definition was not element of statutory offense; moreover, no rational jury could have failed to

find that gun admittedly used by defendant was pistol based on defendant's own testimony that he shot victim with gun, and his taped statement to police that he believed weapon was a ".38." D.C. Code 1981, § 22-3204(a). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

Machine gun.

Possession of a machine gun does not constitute possession of a prohibited weapon unless the weapon is operable. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Possession of a semi-automatic handgun does not constitute possession of a prohibited weapon unless the weapon meets the statutory definition of a machine gun. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Semiautomatic pistol capable of firing 13 consecutive shots without reloading when equipped with properly functioning magazine was "machine gun," within meaning of statute outlawing its possession, even though defendant's magazine was defective and did not automatically reload weapon. D.C. Code 1981, §§ 22-3201(c), 22-3214(a). *United States v. Woodfolk*, 656 A.2d 1145, 1995 D.C. App. LEXIS 77 (1995), writ of certiorari denied by 516 U.S. 1183, 116 S. Ct. 1286, 134 L. Ed. 2d 231, 1996 U.S. LEXIS 1934, 64 U.S.L.W. 3624 (1996).

Merger of offenses.

Contention that it was improper for defendant to be convicted and sentenced on both counts I which charged under federal mail robbery statute with assaulting post office custodian with intent to rob him, and count II under District of Columbia robbery and crime of violence statute with robbing the custodian because the assault charged in count I "merged" with completed robbery charged in count II would be considered by Court of Appeals even though issue was not raised in trial court. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3201, 22-3202. *United States v. Spears*, 449 F.2d 946, 1971 U.S. App. LEXIS 11849 (C.A.D.C. 1971).

Court of Appeals would consider claim that it was improper for defendant to be convicted and sentenced on both counts I which charged under federal mail robbery statute the assault of post office custodian with intent to rob him, and count II which charged under District of Columbia statutes the robbing of custodian, notwithstanding fact that defendant received concurrent sentences, because of possible harmful effect on defendant of myriad collateral consequences of an improper double felony conviction and desirability of having such issue settled. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3201, 22-3202. *United States v. Spears*, 449

F.2d 946, 1971 U.S. App. LEXIS 11849 (C.A.D.C. 1971).

Three of defendant's four convictions for possession of a firearm during the commission of a crime of violence (PFDCV) merged, as convictions were based on single possession of single weapon during violent act. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

Possession of a firearm during a crime of violence (PFCV) counts from two separate incidents did not merge; each time defendant committed independent violent crime, separate decision was made whether to possess firearm during crime. D.C. Code 1981, § 22-3204(b). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

First-degree burglary while armed count did not merge with single carrying pistol without license (CPWL) count from same criminal incident, since burglary count required proof that defendant entered dwelling of another person while armed with or "having readily available" a weapon which CPWL did not, and CPWL count specifically required "carrying" operable, unlicensed pistol which burglary did not. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-3204(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Simultaneous violation of statute defining crime of possession of a firearm during a dangerous crime and statute enhancing penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon does not constitute a single offense for double jeopardy purposes, and resulting convictions do not merge; second statute requires proof that perpetrator exercise a degree of dominion and control not required for conviction under first statute; also, first statute requires proof that instrument possessed was either a firearm or an imitation firearm, while second statute proscribes any instrument found to be a dangerous weapon, which can include but is not limited to firearms and their imitations; thus, each provision requires proof of a fact not required under the other. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Thomas v. United States*, 602 A.2d 647, 1992 D.C. App. LEXIS 23 (1992).

Defendant's conviction for armed robbery did not merge into his conviction for felony-murder. D.C. Code §§ 22-2401, 22-3201. *Ellis v. United States*, 395 A.2d 404, 1978 D.C. App. LEXIS 570 (1978), writ of certiorari denied by 442 U.S. 913, 99 S. Ct. 2830, 61 L. Ed. 2d 280, 1979 U.S. LEXIS 2309 (1979).

Pistol.

An "imitation pistol," within meaning of the "armed" enhancement to a crime of violence or

a dangerous crime, is any object that resembles an actual pistol closely enough that a person observing it in the circumstances would reasonably believe it to be a pistol. *Smith v. United States*, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Elements of offense of carrying pistol without license are carrying operable pistol, without license, and with requisite intent. D.C. Code 1981, § 22-3204(a). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

Air pistol does not constitute "pistol," within meaning of statute defining "pistol" as "any firearm with barrel less than 12 inches in length"; air pistol is not "firearm" since it is discharged by use of compressed air. D.C. Code 1981, § 22-3201(a). *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

"Operability" was necessarily an element of definition of a "pistol" under statute, and thus indictment for carrying a pistol without a license in violation of such statute was not defective in that it failed specifically to charge that the weapon was operable. D.C. Code § 22-3204. *Lee v. United States*, 402 A.2d 840, 1979 D.C. App. LEXIS 387 (1979).

Review.

In prosecution of defendant for carrying a pistol without a license, appellate court would review for plain error defendant's claim that trial judge erred by failing to provide jurors with an instruction defining the term "pistol" with regard to barrel length, given that defendant did not request such an instruction. *Brown v. United States*, 979 A.2d 630, 2009 D.C. App. LEXIS 370 (2009), writ of certiorari denied by 131 S. Ct. 819, 178 L. Ed. 2d 560, 2010 U.S. LEXIS 9811, 79 U.S.L.W. 3360 (U.S. 2010).

Sawed-off shotgun.

Statute prohibiting possession of sawed-off shotgun with barrel less than 20 inches in length was not void for vagueness; person of ordinary intelligence could reasonably understand what "barrel" meant within meaning of statute and that possession of shotgun with barrel less than 20 inches was prohibited. U.S. Const. Amend. 14; D.C. Code 1981, §§ 22-3201(b), 22-3214(a). *In re D.S.*, 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

Weight and sufficiency of evidence.

There was ample evidence from which the jury could infer that the gun was a "pistol" so as to support defendant's conviction for carrying a pistol without a license; defendant repeatedly referred to the firearm as a pistol and specifically testified that the gun was a .45 pistol, witness testified that he saw defendant carrying the gun in his pocket, and defendant admitted that he carried the gun in his waistband.

Brown v. United States, 979 A.2d 630, 2009 D.C. App. LEXIS 370 (2009), writ of certiorari denied by 131 S. Ct. 819, 178 L. Ed. 2d 560, 2010 U.S. LEXIS 9811, 79 U.S.L.W. 3360 (U.S. 2010).

Testimony of the detective who recovered the gun from apartment, that its magazine contained 15 rounds of ammunition and that the gun test-fired approximately 13 times without being reloaded, established the gun was a machine gun, in prosecution for possession of prohibited weapon. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Evidence supported finding that gun was a "pistol," meaning that it had a barrel less than 12 inches in length, as charged in indictment and defined in jury instructions in prosecution for armed robbery; gun used by defendant was small enough so that its handle was obscured, it could be held in one hand, and someone standing only a foot away with arms extended could point the gun directly at a victim. D.C. Code 1981, § 22-3201. *Maddox v. United States*, 745 A.2d 284, 2000 D.C. App. LEXIS 15 (2000).

Defendant's claim that he was on his way to police station to surrender machine gun when he was arrested was insufficient to establish innocent possession of machine gun in his possession, in view of evidence that defendant has been in possession of the weapon for over four hours when arrested and had attempted to flee when police stopped vehicle in which he was a passenger. D.C. Code 1981, §§ 6-2302(10), 22-3201(c). *Turner v. United States*, 684 A.2d 313, 1996 D.C. App. LEXIS 219 (1996).

Defendant's own testimony that he shot victim and eyewitness' testimony that he saw defendant shoot victim and victim fall to ground after bullet went through his head was sufficient to sustain defendant's convictions for second-degree murder while armed, possession of firearm during crime of violence, and carrying pistol without license, though neither gun nor bullet was recovered. D.C. Code 1981, §§ 22-2403, 22-3202, 22-3204(b). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

Evidence in prosecution for possession of prohibited weapon was sufficient to permit jury to find that sawed-off shotgun allegedly possessed by defendant was "operable." D.C. Code 1981, §§ 22-3201, 22-3214(a), 22-3215a. *Washington v. United States*, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

Circumstantial evidence may support finding of "operability" of shotgun for purposes of statute prohibiting possession of shotgun with barrel less than 20 inches long. D.C. Code 1981, §§ 22-3201, 22-3214(a). *Washington v. United States*, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

§ 22-4502. Additional penalty for committing crime when armed.

(a) Any person who commits a crime of violence, or a dangerous crime in the District of Columbia when armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles):

(1) May, if such person is convicted for the first time of having so committed a crime of violence, or a dangerous crime in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment which may be up to, and including, 30 years for all offenses except first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, and first degree child sexual abuse while armed, and shall, if convicted of such offenses while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 5 years; and

(2) Shall, if such person is convicted more than once of having so committed a crime of violence, or a dangerous crime in the District of Columbia, or an offense in any other jurisdiction that would constitute a crime of violence or dangerous crime if committed in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than 5 years and, except for first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed and first degree child sexual abuse while armed, not more than 30 years, and shall, if convicted of such second offense while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 10 years.

(3) Shall, if such person is convicted of first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, or first degree child sexual abuse while armed, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than the minimum and mandatory minimum sentences required by subsections (a)(1), (a)(2), (c) and (e) of this section and § 22-2104, and not more than life imprisonment or life imprisonment without possibility of release as authorized by § 24-403.01(b-2); § 22-2104; § 22-2104.01; and §§ 22-3002, 22-3008, and 22-3020.

(4) For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offenses defined by this section are Class A felonies.

(b) Repealed.

(c) Any person sentenced pursuant to paragraph (1), (2), or (3) of subsection (a) above for a conviction of a crime of violence while armed with any pistol or firearm, shall serve a mandatory-minimum term of 5 years, if sentenced pursuant to paragraph (1) of subsection (a) of this section, or 10 years, if sentenced pursuant to paragraph (2) of subsection (a) of this section, and such

person shall not be released, granted probation, or granted suspension of sentence, prior to serving such mandatory-minimum sentence.

(d) Repealed.

(e)(1) Subchapter I of Chapter 9 of Title 24 shall not apply with respect to any person sentenced under paragraph (2) of subsection (a) of this section or to any person convicted more than once of having committed a crime of violence or a dangerous crime in the District of Columbia sentenced under subsection (a)(3) of this section.

(2) The execution or imposition of any term of imprisonment imposed under paragraph (2) or (3) of subsection (a) of this section may not be suspended and probation may not be granted.

(f) Nothing contained in this section shall be construed as reducing any sentence otherwise imposed or authorized to be imposed.

(g) No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

(July 8, 1932, 47 Stat. 560, ch. 465, § 2; Dec. 27, 1967, 81 Stat. 737, Pub. L. 90-226, title VI, § 605; July 29, 1970, 84 Stat. 600, Pub. L. 91-358, title II, § 205; Mar. 9, 1983, D.C. Law 4-166, §§ 3-7, 30 DCR 1082; Dec. 7, 1985, D.C. Law 6-69, § 9, 32 DCR 4587; July 28, 1989, D.C. Law 8-19, § 3(b), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(b), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(a), 41 DCR 1639; June 8, 2001, D.C. Law 13-302, § 6(a), 47 DCR 7249; June 19, 2001, D.C. Law 13-313, § 21(b)(1), (2), 48 DCR 1873; Dec. 10, 2009, D.C. Law 18-88, § 219(a), 56 DCR 7413.)

Cross references. — Eligibility for geriatric or medical parole, convictions under this section, see § 24-467.

Institutional and educational good time credit eligibility, minimum sentences under this section, see § 24-221.06.

Minimum sentences, conviction under this section, see § 24-403.

Sentencing, supervised release, and good time credit for conviction of felonies under this section committed on or after August 5, 2000, see § 24-403.01.

Section references. — This section is referred to in §§ 22-4513, 24-221.06, 24-403, and 24-467.

Prior Codifications. — 1981 Ed., § 22-3202.

1973 Ed., § 22-3202.

Effect of amendments. — D.C. Law 13-302, in subsec. (a), in par. (1), substituted “up to, and including, 30 years for all offenses except first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, and first degree child sexual abuse while armed imprisonment” for “up to life imprisonment”, in par. (2), substituted “to a period of imprisonment of not less than 5 years and, except for first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed and first

degree child sexual abuse while armed, not more than 30 years” for “to a minimum period of imprisonment of not less than 5 years and a maximum period of imprisonment which may not be less than 3 times the minimum sentence imposed and may be up to life imprisonment”, and added pars. (3) and (4); repealed subsec. (b) which had read: “(b) Where the maximum sentence imposed under this section is life imprisonment, the minimum sentence imposed under subsection (a) of this section may not exceed 15 years imprisonment.”; in subsec. (c), deleted “on parole” following “not be released”; and repealed subsec. (d) which had read: “(d) Except as provided in subsection (c) of this section, any person sentenced under subsection (a)(2) of this section may be released on parole in accordance with Chapter 4 of Title 24, at any time after having served the minimum sentence imposed under that subsection.”

D.C. Law 13-313, in subsec. (c), substituted “paragraph (1), (2), or (3)” for “paragraph (1) or (2)”; and, in subsec. (e), in par. (1), inserted “or to any person convicted more than once of having committed a crime of violence or a dangerous crime in the District of Columbia sentenced under subsection (a)(3) of this section”, and in par. (2), substituted “paragraphs (2) or (3)” for “paragraph (2)”.

D.C. Law 18-88, in subsec. (a)(2), substituted “Columbia, or an offense in any other jurisdic-

tion that would constitute a crime of violence or dangerous crime if committed in the District of Columbia," for "Columbia,".

Emergency legislation. — For temporary (90 day) amendment of section, see § 6(a) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 6(a) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 6(a) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

For temporary (90 day) amendment of section, see § 302(b) of Crime Bill Emergency Amendment Act of 2009 (D.C. Act 18-129, June 29, 2009, 56 DCR 5495).

For temporary (90 day) amendment of section, see § 219(a) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 219(a) of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For temporary (90 day) amendment of section, see § 3(b) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 3(b) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 4-166. — Law 4-166, the "District of Columbia Mandatory-Minimum Sentences Initiative of 1981," was submitted to the electors of the District of Columbia on September 14, 1982, as Initiative No. 9. The results of the voting, certified by the Board of Elections and Ethics on October 12, 1982, were 84,012 for the Initiative and 32,333 against the Initiative. It was transmitted to Congress for review on October 21, 1982 and resubmitted due to the Congressional adjournment sine die on January 6, 1983. Prior to its publication in the D.C. Register on March 9, 1983, emergency legislation delayed the implementation of Law 4-166. This emergency legislation, Act 5-10, provided that the provisions of

this initiative shall not be applied to any person until June 7, 1983, the expiration of the District of Columbia Mandatory-Minimum Sentences Initiative of 1981 Delayed Effectiveness Amendments Emergency Act of 1983.

Legislative history of Law 6-69. — Law 6-69, the "Youth Rehabilitation Amendment Act of 1985," was introduced in Council and assigned Bill No. 6-47, which was referred to the Committee on the Judiciary. The bill was adopted on first and second readings on June 25, 1985 and July 9, 1985, respectively. Signed by the Mayor on July 29, 1985, it was assigned Act No. 6-72 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-19. — For legislative history of D.C. Law 8-19, see Historical and Statutory Notes following § 22-4501.

Legislative history of Law 8-120. — For legislative history of D.C. Law 8-120, see Historical and Statutory Notes following § 22-4501.

Legislative history of Law 10-119. — Law 10-119, the "Anti-Gender Discriminatory Language Criminal Offenses Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-332, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-209 and transmitted to both Houses of Congress for its review. D.C. Law 10-119 became effective on May 21, 1994.

Legislative history of Law 13-302. — Law 13-302, the "Sentencing Reform Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-696, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-406 and transmitted to both Houses of Congress for its review. D.C. Law 13-302 became effective on June 8, 2001.

Legislative history of Law 13-313. — Law 13-313, the "Technical Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-879, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

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Admissibility of evidence.

— Circumstances preceding criminal act, admissibility of evidence.

Limited evidence that defendant was victim's pimp, who had recruited her, together with

another woman, to work for him as prostitutes was admissible, in prosecution for malicious disfigurement while armed, to explain defendant's motive in inflicting injuries of such severity on the victim. *Hudson v. United States*, 790 A.2d 531, 2002 D.C. App. LEXIS 8 (2002).

Evidence relating to drugstore which defendant and others were intending to rob at time defendant saw, shot and killed victim was admissible to explain immediate setting of murder where probative value of evidence outweighed any prejudicial effect. D.C. Code §§ 22-2401, 22-3202. *Tabron v. United States*, 410 A.2d 209, 1979 D.C. App. LEXIS 538 (1979).

Evidence relating to defendant's presence when another tested rifle later used in murder was admissible to explain immediate setting of murder where probative value outweighed any prejudicial effect. D.C. Code §§ 22-2401, 22-3202. *Tabron v. United States*, 410 A.2d 209, 1979 D.C. App. LEXIS 538 (1979).

— Confessions, admissibility of evidence.

Evidence in prosecution for burglary while armed, armed rape, first-degree burglary and petit larceny was sufficient to support conclusion that defendant executed valid waiver of rights and voluntarily signed written confession. D.C. Code §§ 22-1801(a), 22-2202, 22-2801, 22-3202. *Bridges v. United States*, 392 A.2d 1053, 1978 D.C. App. LEXIS 330 (1978), writ of certiorari denied by 440 U.S. 938, 99 S. Ct. 1286, 59 L. Ed. 2d 498, 1979 U.S. LEXIS 1044 (1979).

— Demonstrative evidence, admissibility of evidence.

Where robbery victim testified that shotgun found in defendant's apartment was similar to the shotgun which one of the robbers had, informant testified that the shotgun belonged to defendant and that defendant had it when he left the apartment with another person to commit the robbery, the shotgun was properly admitted into evidence in prosecution for armed robbery. D.C. Code §§ 22-502, 22-2901, 22-3202(a). *United States v. Jackson*, 509 F.2d 499, 1974 U.S. App. LEXIS 5687 (C.A.D.C. 1974).

In prosecution on several counts arising from the robbery of a mail truck, the admission in evidence of a .38-caliber pistol was proper, where a government witness testified that the pistol belonged to one of the defendants and was carried by him during the robbery. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3202. *United States v. Jackson*, 509 F.2d 499, 1974 U.S. App. LEXIS 5687 (C.A.D.C. 1974).

Five .38 caliber cartridges found in defendant's apartment were admissible as non-Drew evidence that defendant had gun of caliber that fired bullet that killed victim, and that the silver-colored revolver that witnesses saw de-

fendant wield was indeed that weapon. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202. *Busey v. United States*, 747 A.2d 1153, 2000 D.C. App. LEXIS 63 (2000).

Trial judge did not abuse his discretion by admitting into evidence knife found in defendant's car, after balancing probative value of knife in proving armed rape against prejudice to defendant in portraying him as person who carried a knife in his car. D.C. Code 1981, §§ 22-2801, 22-3202. *Lee v. United States*, 471 A.2d 683, 1984 D.C. App. LEXIS 301 (1984).

In proceeding in which defendants were convicted of second-degree burglary of jewelry business offices while armed, admission into evidence of the money and jewelry taken from defendant when he was arrested was not abuse of discretion, in view of fact that custody was established showing that such items had been taken from defendant and that a second defendant identified the property being carried by first defendant as the jewelry business' property. D.C. Code 1981, §§ 22-1801, 22-3202. *Lee v. United States*, 454 A.2d 770, 1982 D.C. App. LEXIS 511 (1982), writ of certiorari denied by 464 U.S. 972, 104 S. Ct. 409, 78 L. Ed. 2d 349, 1983 U.S. LEXIS 2324, 52 U.S.L.W. 3368 (1983).

— Documentary evidence, admissibility of evidence.

In proceeding in which defendants were convicted of second-degree burglary while armed, admission of tape recording of prearrest negotiations and videotape of arrest scene was not abuse of discretion due to fact that the tapes were potentially highly prejudicial, in view of fact that the tapes had some probative value, at least as corroborative evidence, that their actual prejudicial impact was probably minimal and that trial judge gave a cautionary instruction to jury. D.C. Code 1981, §§ 22-1801, 22-3202. *Lee v. United States*, 454 A.2d 770, 1982 D.C. App. LEXIS 511 (1982), writ of certiorari denied by 464 U.S. 972, 104 S. Ct. 409, 78 L. Ed. 2d 349, 1983 U.S. LEXIS 2324, 52 U.S.L.W. 3368 (1983).

— Expert testimony, admissibility of evidence.

Medical examiner's testimony that she did not think victim was injured by a hand because of skull fractures, witness's testimony that it looked like victim was hit with something, and photographs showing blood splatter on the walls, ceilings, and shelving in the victim's home was sufficient for imposition on defendant of additional penalty for murder in the second degree for committing a crime when armed with or having readily available any dangerous or deadly weapon. *Brown v. United States*, 27 A.3d 127, 2011 D.C. App. LEXIS 522 (2011), writ of certiorari denied by 133 S. Ct.

374, 184 L. Ed. 2d 221, 2012 U.S. LEXIS 7710, 81 U.S.L.W. 3170 (U.S. 2012).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, exclusion of psychology professor's proffered testimony including testimony that "eye-witness [sic] identification is. . . not as simple as it is assumed to be. . .," that scientific literature supported conclusion that one under stress does not make as good an observation as one not under stress, that once a person publicly announced an opinion, he would be motivated to maintain it and that suggestions from a person in authority could have a considerable effect on identification process was not an abuse of discretion. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

— Harmless or reversible error, admissibility of evidence.

Any error in admitting videotaped statement to police in which defendant described placing victim in the trunk of his car, driving to the location of the murder, digging a hole for victim's body, and shooting victim was harmless beyond a reasonable doubt in prosecution for first-degree felony murder while armed, first-degree premeditated murder while armed, kidnapping while armed, and other offenses; statement was so cumulative of other evidence that it could not have affected the outcome. *Dowtin v. United States*, 999 A.2d 903, 2010 D.C. App. LEXIS 412 (2010).

Violation of defendant's Sixth Amendment right of confrontation caused by trial court's admission of a chemist's report at a trial for possession of a controlled substance with intent to distribute while armed was not harmless as to the lesser included offense of attempted possession of a controlled substance with intent to distribute while armed; no other direct evidence was introduced to prove that the substance seized from defendant was cocaine, police officers were able to give only limited testimony as to what they were able to see during a purported narcotics transaction involving defendant, and substances that were not controlled substances were also found on defendant. *Doreus v. United States*, 964 A.2d 154, 2009 D.C. App. LEXIS 9 (2009).

Testimony by detective about surviving victim's identification of defendant as one of the participants in charged incident, though at times offering more details of victim's description of defendant's role in the events than were necessary to make the identification understandable, did not warrant reversal of murder and armed robbery convictions; case against defendant was strong, detective's testimony

was brief, and surviving victim had testified and been cross-examined at length on his account of the crimes. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Any error, in murder and armed robbery prosecution, in admitting into evidence a detective's notes showing a telephone number, assigned to a residence at which defendant sometimes stayed, at which surviving victim stated he had reached defendant to set up drug transaction at which charged crimes occurred was not so prejudicial as to warrant a new trial; evidence showed that surviving victim positively identified defendant and other assailants under circumstances tending to show reliability of identifications. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Mistrial was not required, in murder and armed robbery prosecution arising from incident in which witnesses described one of the assailants as having plats in his hair, when detective testified that a police identification photograph that showed defendant with plats in his hair was taken before defendant's arrest in present case; testimony was a brief reference in a lengthy trial, and trial court gave curative instruction that possession by police of a person's photograph does not mean the person has ever committed an offense. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Improper failure to suppress statement obtained in violation of Fifth Amendment right to counsel was not harmless beyond a reasonable doubt in prosecution for second-degree murder while armed in which defendant argued self-defense and jury returned conviction for lesser included offense of voluntary manslaughter while armed; defendant's assertions in statement that he stepped up, cut victim, and took off running and did not know whether victim had any weapons on him undoubtedly carried great weight with reasonable jurors, as other evidence presented by government was not overwhelming. *Tindle v. United States*, 778 A.2d 1077, 2001 D.C. App. LEXIS 172 (2001).

Any error was harmless, in prosecution for armed premeditated murder, in admitting other crimes evidence that defendant chased victim with a gun the night before the murder; trial court provided instruction that jury could only consider the evidence to determine premeditation and malice once it determined beyond a reasonable doubt that defendant was the murderer, and instruction was reread in response to jury's inquiry during deliberations as to whether it could use the evidence for identification purposes. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

Any error in trial judge's precluding defendant from eliciting evidence of disposal of gun,

which evidence was allegedly critical to third-party perpetrator defense, was harmless, given strength of evidence against defendant, in prosecution for second-degree murder while armed and weapons offenses; three eyewitnesses identified defendant as the shooter, all witnesses specifically denied seeing alleged gunman with gun on evening in question, and alleged gunman did not have motive to kill victim. D.C. Code 1981, §§ 22-2403, 22-3202, 22-3204(a, b). *Boykin v. United States*, 738 A.2d 768, 1999 D.C. App. LEXIS 219 (1999).

Any error in trial court's limiting scope of manslaughter defendant's testimony regarding his previous encounters with victim was harmless, considering strength of government's case as to excessiveness of force used against victim. D.C. Code 1981, §§ 22-2403, 22-3202. *Smith v. United States*, 686 A.2d 537, 1996 D.C. App. LEXIS 259 (1996), writ of certiorari denied by 522 U.S. 839, 118 S. Ct. 115, 139 L. Ed. 2d 67, 1997 U.S. LEXIS 5021, 66 U.S.L.W. 3257 (1997).

In prosecution for second degree murder, attempted robbery, assault with intent to kill while armed, carrying of pistol without a license, assault with intent to kill while armed, and obstruction of justice, defendant was not denied a fair trial when court admitted evidence concerning threats he had uttered to witnesses but failed to instruct jurors that their consideration of such threats was to be limited only to its showing of defendant's consciousness of guilt. D.C. Code 1981, §§ 22-501, 22-703, 22-2902, 22-3202, 22-3204. *Smith v. United States*, 470 A.2d 315, 1983 D.C. App. LEXIS 550 (1983), writ of certiorari denied by 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344, 1985 U.S. LEXIS 988, 53 U.S.L.W. 3598 (1985).

Reversal of second-degree murder while armed conviction was required where the Court of Appeals could not say with sufficient certainty that evidence which was properly admitted was so overwhelming that defendant was not impermissibly and unduly prejudiced by introduction of witness' highly damaging hearsay statement as to defendant previously holding a gun to victim's head. D.C. Code §§ 22-2403, 22-3202. *Campbell v. United States*, 391 A.2d 283, 1978 D.C. App. LEXIS 566 (1978).

Even if court in prosecution for second-degree murder erred in ruling that prior consistent statements of defendant were inadmissible under present state of mind exception to hearsay rule, it would not have been abuse of discretion to exclude such statements on account of delay or confusion in that such statements were merely cumulative of other evidence and were only admissible for a limited purpose. D.C. Code §§ 22-2403, 22-3202. *Rink v. United States*, 388 A.2d 52, 1978 D.C. App. LEXIS 526 (1978).

In proceeding in which accused was charged with armed robbery and burglary offenses alleged to have occurred in carryout restaurant on June 29 and July 8 and in which restaurant employee testified that she recognized accused when he entered on July 8, error in admitting employee's remark that she knew accused "from two previous robberies where he robbed us before" was harmless, in that untainted testimony overpoweringly established that accused committed July 8th offenses, that jury was instructed that remark was not to be considered on issue of guilt and that accused was only convicted of July 8th offenses. D.C. Code §§ 22-1801(b), 22-2901, 22-3202. *Harris v. United States*, 366 A.2d 461, 1976 D.C. App. LEXIS 432 (1976).

— Hearsay, admissibility of evidence.

Defendant could not complain about the admission of victim's hearsay statements on the issues of identity, defendant's motive, and victim's state of mind; defendant waived confrontation rights to object to the hearsay, as he procured the victim's silence by murdering her. *Sweet v. United States*, 756 A.2d 366, 2000 D.C. App. LEXIS 118 (2000).

In murder and kidnapping prosecution, trial court properly refused to permit defendant's mother to testify, over state's hearsay objection, as to what defendant told her on the telephone after defendant encountered the murder victim on day of his death, despite defense counsel's argument that the statement was not being offered for its truth but rather to show defendant's state of mind. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

Testimony of police officer recounting pretrial identification, by victim of assault with intent to commit armed robbery, of handgun that officer had found on day following the attempted robbery near site of defendant's apprehension, even though technically hearsay, was admissible, where there were circumstantial guarantees of trustworthiness and reliability surrounding the testimony in that both victim and police officer testified at trial and were available for cross-examination on details surrounding the pretrial identification of the gun, and where police officer's testimony merely corroborated evidence already adduced from the victim by the prosecutor. D.C. Code 1981, §§ 22-501, 22-3202. *Harley v. United States*, 471 A.2d 1013, 1984 D.C. App. LEXIS 307 (1984).

In prosecution for armed robbery and felony-murder, police detective was properly allowed to testify that he received over telephone the serial number of gun sold by defendant and what the serial number was, same being extremely reliable evidence such as that consti-

tuting extrajudicial identification testimony which is admissible as substantive evidence. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202. *Tribble v. United States*, 447 A.2d 766, 1982 D.C. App. LEXIS 380 (1982).

In proceeding in which defendant was convicted of second-degree murder while armed and of carrying pistol without a license, declarant's alleged hearsay statement to officer that specified individual other than defendant shot victim did not have sufficient equivalent circumstantial guarantees of trustworthiness to warrant its admission into evidence as exception to hearsay rule, in that statement was not made under oath, was not made in presence of trier of fact and that declarant was not subject to cross-examination and in view of fact that it was not demonstrated that probability of trustworthiness in statement outweighed normal risks associated with inherent dangers of hearsay statements. D.C. Code §§ 22-2403 to 22-3202, 22-3204; Fed. Rules Evid. Rule 804(b)(5), 18 U.S.C. *Jackson v. United States*, 424 A.2d 40, 1980 D.C. App. LEXIS 416 (1980), writ of certiorari denied by 454 U.S. 1127, 102 S. Ct. 979, 71 L. Ed. 2d 116, 1981 U.S. LEXIS 3006, 50 U.S.L.W. 3487 (1981).

In prosecution for murder, wherein defendant was accused of shooting his former girl friend, and wherein defendant failed to raise any of the three defenses, including accident, self-defense, or suicide by decedent, which traditionally had been understood to call into question state of mind of deceased declarant, but rather defended on claim of mistaken identity and alibi, state of decedent-declarant's state of mind at time of her murder was not in issue; therefore, trial court erred in admitting hearsay testimony as to statements made by decedent-declarant in which she recounted her fear of defendant as well as threats and assaults that defendant had allegedly directed at her. D.C. Code §§ 22-2401, 22-3202. *Clark v. United States*, 412 A.2d 21, 1980 D.C. App. LEXIS 256 (1980).

Statements made by murder victim indicating that she was afraid of defendant were admissible under state of mind exception at second-degree murder while armed trial, even though certain hearsay evidence of specific prior acts by defendant should have been excluded. D.C. Code §§ 22-2403, 22-3202. *Campbell v. United States*, 391 A.2d 283, 1978 D.C. App. LEXIS 566 (1978).

Trial court's error, if any, in allowing witness to provide hearsay testimony which allegedly implicated defendant in robbery was harmless in prosecution for first-degree murder while armed, possession of a firearm during a crime of violence and carrying a pistol without a license (CPWL); witness's testimony regarding robbery and retaliation was not the only evidence presented in furtherance of government's theory of

ongoing feud as motive for shooting, defense counsel seriously called into question witness's credibility on cross-examination, and evidence against defendant was strong and compelling. *Daniels v. United States*, 2 A.3d 250, 2010 D.C. App. LEXIS 494 (2010), writ of certiorari denied by 131 S. Ct. 806, 178 L. Ed. 2d 538, 2010 U.S. LEXIS 9561, 79 U.S.L.W. 3343 (U.S. 2010).

— Identity of accused, admissibility of evidence.

Evidence that defendant possessed a revolver that might have been the murder weapon was admissible to establish identity of defendant as person who robbed and killed victim. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202. *Busey v. United States*, 747 A.2d 1153, 2000 D.C. App. LEXIS 63 (2000).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, evidence sufficiently established that complainant had an independent source of identification based on his observation of accused during the robbery and, thus, that an allegedly impermissibly suggestive photographic array did not taint his subsequent identification of accused. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, finding that only one photographic array was shown to complainant was not clearly erroneous. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

Totality of circumstances did not give rise to substantial likelihood of irreparable misidentification from photographs and accordingly, trial court did not err in denying defendants' motion to suppress identification, in prosecution for armed robbery, robbery and assault with dangerous weapon. D.C. Code §§ 22-502, 22-2901, 22-3202. *Hill v. United States*, 367 A.2d 110, 1976 D.C. App. LEXIS 436 (1976).

Even if accused, who elected not to testify at trial on charge of armed robbery, assault with a dangerous weapon, assault on police officer and possession of prohibited weapon, had "testimonial privilege" at trial to don jacket he was alleged to have worn at time of the offenses, denial of request that he be permitted to put on such jacket "to make double sure" that jacket had never been seen by his wife, who had testified that she had never seen the jacket, was not error. D.C. Code §§ 22-502, 22-505(a),

22-2901, 22-3202, 22-3214(a). *White v. United States*, 358 A.2d 645, 1976 D.C. App. LEXIS 279 (1976).

— Intent and motive, admissibility of evidence.

Defendant's conduct in pointing pistol at victim in connection with threats and other expressions of hostility was evidence of prior aggressive conduct of defendant toward the victim and was relevant to defendant's claim of self-defense to charge for second-degree murder. D.C. Code §§ 22-2403, 22-3202. *Rink v. United States*, 388 A.2d 52, 1978 D.C. App. LEXIS 526 (1978).

— Judicial notice.

Even though proof at trial showed that robbery was committed while armed, inasmuch as defendant was only charged with unarmed robbery, court could not take judicial notice of fact that a pistol was used in order to deny sentence under the Youth Corrections Act. D.C. Code §§ 22-3202, 22-3202(d)(1); 18 U.S.C. § 5005 et seq. *United States v. Bolden*, 514 F.2d 1301, 1975 U.S. App. LEXIS 14122 (C.A.D.C. 1975).

— Opinion evidence, admissibility of evidence.

Permitting police officer to testify regarding direction from which shot causing bullet hole in wall was fired did not constitute an abuse of discretion in prosecution for armed robbery and for carrying a dangerous weapon. D.C. Code §§ 22-2901, 22-3202, 22-3204. *United States v. Pierson*, 503 F.2d 173, 1974 U.S. App. LEXIS 7074 (C.A.D.C. 1974).

— Other offenses, admissibility of evidence.

Evidence of narcotics dealing was appropriate means of establishing Government's theory that defendant had induced accomplice to commit robbery in order to obtain additional narcotics and to pay for narcotics which he had previously purchased from defendant on credit. D.C. Code §§ 22-2901, 22-3202. *United States v. Lee*, 509 F.2d 400, 1974 U.S. App. LEXIS 5476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 1006, 95 S. Ct. 1451, 43 L. Ed. 2d 765, 1975 U.S. LEXIS 1180 (1975).

Defendant's prior conviction under District of Columbia law for second-degree murder while armed constituted a crime punishable by imprisonment in excess of one year, for purposes of admissibility of evidence of that conviction in order to impeach defendant's testimony in prosecution of defendant for possession with intent to distribute cocaine base, since offense of conviction was punishable by term of five years to life imprisonment. *United States v. Pettiford*, 238 F.R.D. 33, 2006 U.S. Dist. LEXIS 67055 (2006).

Witness's reference to prior drug dealings with defendant was admissible to show defendant's motive for committing the crimes, his intent in entering house, and his knowledge of where to find the hidden safe, in prosecution arising from double murder during a residential robbery. D.C. Code 1981, §§ 22-105(a), 22-501, 22-1801(a), 22-2401, 22-2901, 22-3202. *Dancy v. United States*, 745 A.2d 259, 2000 D.C. App. LEXIS 12 (2000).

In view of fact that evidence relating to two robberies was simple and distinct and there was no claim that jury confused it and where defendants at trial were well-prepared in their attempt to refute each charge separately and where circumstances of the two robberies were so similar and so proximate in time as to tend to establish defendant's identity, trial court did not abuse discretion in ruling that potential prejudice from admission of evidence of defendant's commission of second robbery was outweighed by highly probative value of such evidence. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 22-2901, 22-3202. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

In prosecution upon two robbery counts, admission of evidence of first robbery, although it was not probative of any element of Government's case against defendant in second robbery, was not an abuse of discretion where it was probative of codefendant's intent to commit second robbery, where defendant did not object to joint trial with codefendant, where there was no indication that evidence of the two crimes was confused in its presentation to jury and trial judge had no reason to suppose that jury could not keep separate what was relevant to each, and where evidence of second robbery was probative of Government's charge that defendant committed first robbery, and trial judge did not abuse his discretion in denying severance of counts. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 22-2901, 22-3202. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, detective's testimony that modus operandi was "where we keep pictures of men that have committed different types of crimes. . . like rape, robbery, so on" did not require new trial on ground that it was evidence of another crime committed by accused, in view of the relatively attenuated connection made by detective's testimony between accused's photograph and the modus operandi file and in view of instruction that the reference to modus operandi was not to be considered as an indication that accused had any record of previous crimes. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S.

973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

In criminal proceeding in which accused was charged with armed robbery and burglary offenses alleged to have occurred in carryout restaurant on June 29 and July 8 and in which restaurant employee testified that she recognized accused when he entered on July 8, employee's remark that she knew accused "from two previous robberies where he robbed us before" was not admissible for purpose of establishing identity, in that there was no need for reference to uncharged offense because employee could have testified that she recognized accused on basis of having seen him in restaurant on two prior occasions. D.C. Code §§ 22-1801(b), 22-2901, 22-3202. *Harris v. United States*, 366 A.2d 461, 1976 D.C. App. LEXIS 432 (1976).

— Relevancy, admissibility of evidence.

Trial court did not err, at juvenile defendant's trial on assault and robbery charges stemming from group attack on pedestrian, by admitting testimony about group's assault on another, unknown pedestrian earlier the same evening; earlier attack occurred after gang had agreed to attack any would-be drug buyers and thus was relevant to explain the circumstances surrounding the charged offenses. D.C. Code 1981, §§ 22-501, 22-2901, 22-3202. *In re T.H.B.*, 670 A.2d 895, 1996 D.C. App. LEXIS 6 (1996).

— Self-defense, admissibility of evidence.

Manslaughter victim's prior armed robbery conviction was inadmissible in support of self-defense claim, absent claim that defendant knew of that conviction when he killed victim. D.C. Code 1981, §§ 22-2403, 22-3202. *Smith v. United States*, 686 A.2d 537, 1996 D.C. App. LEXIS 259 (1996), writ of certiorari denied by 522 U.S. 839, 118 S. Ct. 115, 139 L. Ed. 2d 67, 1997 U.S. LEXIS 5021, 66 U.S.L.W. 3257 (1997).

In homicide trial where accused raises claim of self-defense, Government may properly introduce evidence of victim's past behavior toward defendant to show who was the initial aggressor and whether defendant was in reasonable fear of imminent great bodily harm. D.C. Code 1981, §§ 22-2403, 22-3202. *Rawls v. United States*, 539 A.2d 1087, 1988 D.C. App. LEXIS 22 (1988).

Arguments and conduct of counsel, generally.

In prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, unvariegated emphasis of word "they" by counsel for defendant in counsel's closing argument, in which he often referred to perpetrators as "they," was not plain error prejudicing two codefendants where at least six men were in group which ransacked

victim's apartment at time of charged offenses. D.C. Code §§ 22-1801(b), 22-2401, 22-2901, 22-3202; Fed.Rules Crim.Proc. rule 52(b), 18 U.S.C. *United States v. Leonard*, 494 F.2d 955, 1974 U.S. App. LEXIS 10300 (C.A.D.C. 1974).

The trial court's restriction of defense counsel's closing argument to prevent counsel from referring to what occurred during grand jury proceedings was not an abuse of discretion, during prosecution for aggravated assault while armed; evidence concerning the procedure of the grand jury was not in evidence. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

In manslaughter prosecution in which defendant claimed self-defense, prosecutor's comments that there was no evidence that defendant "actually believed" and "actually felt" fear of death or serious bodily injury did not implicate defendant's failure to testify at trial, and, at worst, reflected on evidence that defendant had not mentioned in his sworn statement to police that he actually had felt or believed his life was in danger when he was choking victim. D.C. Code 1981, §§ 22-2405, 22-3202; U.S. Const.Amend. 5. *Gray v. United States*, 589 A.2d 912, 1991 D.C. App. LEXIS 80 (1991).

Prosecutor's closing argument to consider defendant before painting government witnesses "as to the low life that you might want to believe they are" was improper in prosecution for murder, burglary, and carrying of pistol without license. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *James v. United States*, 580 A.2d 636, 1990 D.C. App. LEXIS 223 (1990).

In prosecution for voluntary manslaughter while armed, court properly concluded that prosecutor's adducing testimony from police officer about blood on victim's shirt, and prosecutor's reference to flow of blood in his closing argument, did not constitute prosecutorial misconduct. D.C. Code 1981, §§ 22-2405, 22-3202; U.S. Const.Amend. 6. *Dixon v. United States*, 565 A.2d 72, 1989 D.C. App. LEXIS 206 (1989).

The Government's untimely disclosure of allegedly exculpatory evidence did not entitle defendant to mistrial, in prosecution for armed robbery; defendant failed to demonstrate any prejudice resulting from delay in receipt of the evidence. U.S. Const.Amend. 5, 14; D.C. Code 1981, §§ 22-2901, 22-3202. *Bellanger v. United States*, 548 A.2d 501, 1988 D.C. App. LEXIS 182 (1988).

Trial court's cautionary instruction that arguments of counsel were not evidence mitigated any prejudice as result of codefendant's closing argument that he was not guilty and that he was caught in defendant's robbery. D.C. Code 1981, §§ 22-2901, 22-3202. *Hordge v. United States*, 545 A.2d 1249, 1988 D.C. App. LEXIS 125 (1988).

Prosecutor who failed to disclose witness' photographic identification of defendant despite trial court's order to disclose all identifications to defense before testimony and who could have informed defendant of photographic identification at bench conference immediately preceding testimony of witness committed misconduct in prosecution for armed robbery, assault with intent to commit robbery while armed, assault with intent to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's misconduct which consisted of failure to disclose witness' photographic identification of defendant before testimony despite trial court's order to disclose all photographic identifications to defendant, which occurred after another witness' identification of defendant's photograph, and which occurred in trial with weak defense to robbery charges and implausible explanation by defendant for possession of stolen property did not substantially prejudice defendant by swaying jury verdict in prosecution for armed robbery, assault with intent to kill and commit robbery while armed assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's closing argument, which urged jurors to use "knowledge of the street" to evaluate each witness' testimony and which stated that two victims for reasons of their own repeatedly testified as to inability to recall events, created ambiguity whether prosecutor intended to remind jurors to use common sense or whether prosecutor was arguing facts not in evidence and suggesting that victims suffered false loss of memory, did not clearly demonstrate prosecutor's intent to argue worst possible meaning, and, therefore, was not misconduct in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor who called victims of robbery to testify despite knowledge that victims poorly remembered events, who wanted jury to be able to hear from victims named in indictment, who wanted to prevent adverse inference against government that could result from absence of victims' testimony, and who wanted to test witnesses' ability to contribute to truth did not call witnesses for improper motives and did not commit misconduct in prosecution for armed robbery, assault with intent to commit robbery

and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor who made incomplete missing witness argument after objection was sustained to claim that only girl friend and sister supported defendant's alibi of being at party with several other people acted improperly in prosecution for armed robbery, assault with intent to commit robbery and with intent to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's statement in closing argument in murder prosecution, to the effect that defendant got a gun from the trunk of his car before going to place where victim was kidnapped, was most likely an inadvertent, and under the circumstances, understandable mistake, despite fact that no such evidence was offered, where defendant's counsel had sought to obtain an admission from a witness that the witness had stated previously this very fact. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

Prosecutor's remarks to jury in closing argument, in defendant's murder and kidnapping prosecution, regarding defendant's two prior murder convictions were not improper, where prosecutor's remarks came in the midst of a discussion concerning defendant's credibility, and where prosecutor correctly told jurors that they could consider defendant's prior convictions in determining whether he was telling the truth, but not to infer that "because he did those, he did these." D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

In murder and kidnapping prosecution, prosecutor's comments to jury in closing argument as to statements made by one defendant to bystanders as he pushed murder victim into the car, including a statement that "signifying is worse than stealing," and "don't think this can't happen to you," did not fall within rule proscribing use of missing witness inference, where such statement was made to explain Government's lack of corroborative evidence, not to suggest there were witnesses whom defendants were afraid to call because their testimony would be adverse. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

Where defendant's objections to prosecutor's closing arguments in murder and kidnapping prosecution were not made at trial, Court of

Appeals could reverse convictions only if there was misconduct so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

In prosecution wherein one defendant was convicted of carrying a pistol without a license and both defendants were convicted of armed robbery, suggestion that dire harm would have come to victim, taxi driver, if defendants had had correct caliber bullet was speculative, totally lacking in support by evidence, and irrelevant, and was objectionable as clearly calculated to arouse sympathy of jurors for victim and to play on their personal fears about violence. D.C. Code 1973, §§ 22-2901, 22-3202, 22-3204. *Powell v. United States*, 455 A.2d 405, 1982 D.C. App. LEXIS 496 (1982).

Statement by prosecutor at trial of defendant for second-degree murder while armed, and carrying a pistol without a license, that testimony of the Government's witness was especially credible since witness chose to testify against defendant even though he was convinced that by doing so he faced "certain death" did not constitute reversible error, especially in light of trial court's careful instructions which mitigated the potential for prejudice which the prosecutor's remarks might have caused. D.C. Code 1973, §§ 22-2403 to 22-3202(a)(1), 22-3204. *Hill v. United States*, 434 A.2d 422, 1981 D.C. App. LEXIS 336 (1981), writ of certiorari denied by 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307, 1982 U.S. LEXIS 432, 50 U.S.L.W. 3548 (1982).

Trial court did not err in refusing to give curative instruction after prosecutor suggested, in closing argument, that defendant may have carried his pistol prior to the incident in question with intent of using it to commit a crime since that statement was a proper rebuttal to defense counsel's argument that defendant had been carrying the gun to defend himself and that the government had failed to show any motive for the shooting and, in addition, court subsequently instructed jury that arguments of counsel are not evidence. D.C. Code §§ 22-501, 22-505, 22-3202, 22-3204. *Fletcher v. United States*, 335 A.2d 248, 1975 D.C. App. LEXIS 357 (1975).

Arrest.

Fact that defendant had been present at scene of robberies, that he had minimal resemblance to general description of assailant, and that there had been weak, tenuous identification of defendant by tour guide did not afford probable cause to believe that defendant had participated in robberies and assaults, and, to thus establish that he could be arrested. D.C. Code §§ 22-2901, 22-3202; U.S. Const. Amend.

4. *Crews v. United States*, 389 A.2d 277, 1978 D.C. App. LEXIS 542 (1978), reversed by 445 U.S. 463, 100 S. Ct. 1244, 63 L. Ed. 2d 537, 1980 U.S. LEXIS 1293 (1980).

On defendant's appeal from proceeding in which he was convicted of armed robbery and in which photographic and lineup identifications were suppressed but in-court identifications were not suppressed, Court of Appeals had to accept trial court's determination that there had been no probable cause to arrest defendant where Government had not appealed such determination and the resulting evidentiary suppression. D.C. Code §§ 22-2901, 22-3202; U.S. Const. Amend. 4. *Crews v. United States*, 389 A.2d 277, 1978 D.C. App. LEXIS 542 (1978), reversed by 445 U.S. 463, 100 S. Ct. 1244, 63 L. Ed. 2d 537, 1980 U.S. LEXIS 1293 (1980).

Evidence at hearing on motion to suppress disclosed that police officer, who spotted defendant while proceeding to scene of robbery and who had obtained a description of robber which fit defendant, had probable cause to arrest defendant without a warrant. D.C. Code §§ 22-502, 22-2901, 22-3202. *Randall v. United States*, 353 A.2d 12, 1976 D.C. App. LEXIS 481 (1976).

Bail.

Federal Bail Reform Act, rather than District of Columbia Code bail provisions, is applicable where a defendant, convicted in federal court of a District of Columbia Code offense, presents a motion for release pending appeal in federal courts of District of Columbia. 18 U.S.C. §§ 3146, 3148, 3772; D.C. Code §§ 22-502, 22-2901, 22-3202, 23-1325, 23-1325(c); Fed. Rules App. Proc. rules 9, 9(c), 18 U.S.C.; Fed. Rules Crim. Proc. rules 46, 46(c), 18 U.S.C. *United States v. Brown*, 483 F.2d 1314, 1973 U.S. App. LEXIS 8492 (C.A.D.C. 1973).

Defendant's past conduct is important evidence, perhaps the most important, in predicting his probable future conduct, with respect to determination of whether preventive detention is warranted in an assault with intent to kill while armed (AWIKWA) case; therefore, substantial weight must be accorded to presence in, or absence from, the defendant's record of convictions of dangerous crimes or a history of violent conduct. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

In most, if not all, cases, proof of (1) probable cause that defendant committed assault with intent to kill while armed (AWIKWA) and (2) facts and circumstances of charged offense will be insufficient, without more, to establish by clear and convincing evidence that a defendant is dangerous and preventively detainable. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-

1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Preventive detention of defendant was not warranted, in an assault with intent to kill while armed (AWIKWA) case; though alleged attempted assassination was chilling, in that man shot was under a car, weight of evidence against defendant was marginal, defendant had no criminal record with exception of single expunged conviction, there was no evidence of recent drug or alcohol involvement, defendant apparently had unusually strong community support and ties, and defendant was not on probation, parole, or other supervised release at time of charged offense. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Defendant can never be presumed to be dangerous, as would subject defendant to preventive detention, solely on basis of finding of probable cause that he has committed assault with intent to kill while armed (AWIKWA) or first-degree murder while armed (FDMWA). D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

In absence of statutory presumption based on finding of substantial probability, government's burden to prove by clear and convincing evidence that defendant is properly subject to preventive detention cannot be satisfied simply by reference to known facts regarding crime of which defendant has been accused; court's calculus must include not only the nature and circumstances of offense charged, but also, *inter alia*, weight of evidence against defendant, defendant's history and criminal record, if any, defendant's community ties and resources, whether defendant was on parole, probation, or release pending trial at time of charged offense, and danger that defendant's release would pose to any person in community. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Conduct of trial.

In prosecution for assault with intent to kill while armed and carrying dangerous weapon, court's comment, taken in context, was not objectionable as withdrawing from jury any issue affecting determination of guilt or innocence. 18 U.S.C. § 294(d); D.C. Code §§ 22-501, 22-3202, 22-3204. *United States v. Craven*, 458 F.2d 802, 1972 U.S. App. LEXIS 10987 (C.A.D.C. 1972).

Constitutional rights of accused.

Trial court's limitation of scope of manslaughter defendant's testimony regarding his previous encounters with victim, and refusal to reinstruct jury on "castle doctrine" did not deny

defendant's due process right to present defense; defendant was able to mount defense which convinced jury that he was not guilty of second-degree murder while armed, as charged in indictment, in spite of strength of government's evidence. U.S. Const. Amend. 14; D.C. Code 1981, §§ 22-2403, 22-3202. *Smith v. United States*, 686 A.2d 537, 1996 D.C. App. LEXIS 259 (1996), writ of certiorari denied by 522 U.S. 839, 118 S. Ct. 115, 139 L. Ed. 2d 67, 1997 U.S. LEXIS 5021, 66 U.S.L.W. 3257 (1997).

In prosecution for first-degree felony-murder while armed, second-degree burglary while armed, carrying a pistol without a license, second-degree burglary and grand larceny, pre-trial publicity concerning defendant's prior arrests and criminal history and cache of property recovered from defendant's home that had probable connections with similar offenses was not of such an extreme nature as to deprive defendant of a fair trial. D.C. Code 1981, §§ 22-1801(b), 22-2201, 22-2401, 22-3202, 22-3204; U.S. Const. Amend. 6. *Welch v. United States*, 466 A.2d 829, 1983 D.C. App. LEXIS 484 (1983).

In proceeding in which defendant was convicted of second-degree murder while armed and of carrying pistol without license, Government, which had furnished defendant with a copy of a declarant's statement that specified individual other than defendant had shot victim and had furnished the address and telephone number of declarant, did not deny defendant due process by failing to remain apprised of whereabouts of declarant and to maintain his availability. D.C. Code §§ 22-2403 to 22-3202, 22-3204; U.S. Const. Amends. 6, 14. *Jackson v. United States*, 424 A.2d 40, 1980 D.C. App. LEXIS 416 (1980), writ of certiorari denied by 454 U.S. 1127, 102 S. Ct. 979, 71 L. Ed. 2d 116, 1981 U.S. LEXIS 3006, 50 U.S.L.W. 3487 (1981).

Due process clause was not violated when prosecution carried out threat made during plea negotiations to have defendant reindicted on more serious charges, on which he was plainly subject to prosecution at time first indictment was returned, if defendant did not plead guilty to offenses with which he was originally charged, even though it would have been better practice to bring all charges in original indictment unless there were compelling reasons, such as newly discovered evidence, for bringing new or additional charges. U.S. Const. Amends. 5, 14. *Harvey v. United States*, 395 A.2d 92, 1978 D.C. App. LEXIS 572 (1978), writ of certiorari denied by 441 U.S. 936, 99 S. Ct. 2061, 60 L. Ed. 2d 665, 1979 U.S. LEXIS 1771 (1979).

Atmosphere created in proceeding, in which accused was convicted of armed robbery and possession of a prohibited weapon and in which

remarks, better left unsaid, were made, was not such as to deny accused a fair trial or prejudice the defense so as to require a new trial. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

Defendant's rights to due process and effective representation by counsel were not violated because of fact that, in agreeing to continuance of trial date because of conflicts in court's calendar, defense counsel did not engage in on-the-record discussion of fact that defendant would become 22 years of age during interim and would thereafter not be eligible for sentencing under Youth Corrections Act. D.C. Code §§ 22-501, 22-3202; 18 U.S.C. §§ 5005 et seq., 5010(e); U.S. Const. Amends. 5, 6. *Coleman v. United States*, 332 A.2d 355, 1975 D.C. App. LEXIS 322 (1975).

Construction with other laws.

Prosecution of a defendant under both the federal bank (savings and loan) robbery statute and the local armed robbery statute of the District of Columbia is not a denial of equal protection; a defendant is subject to only a single trial in the District and there are no possible adverse consequences due to being found guilty under both federal and District of Columbia law, since he can ultimately be sentenced under only one statutory scheme. 18 U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

If anything, the federal mail robbery statute contemplates a single conviction, not multiple convictions, when the first tier of mail robbery is aggravated by the use of a deadly weapon. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3202. *United States v. Knight*, 509 F.2d 354, 1974 U.S. App. LEXIS 5667 (C.A.D.C. 1974).

The federal mail robbery statute and the District of Columbia robbery and crime of violence statutes are applicable throughout District of Columbia. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3202. *United States v. Spears*, 449 F.2d 946, 1971 U.S. App. LEXIS 11849 (C.A.D.C. 1971).

Defendant, convicted of, inter alia, District of Columbia offense of possession with intent to distribute crack cocaine while armed, was not entitled to reduction of sentence pursuant to Federal Sentencing Guidelines amendment which reduced the base offense level for offenses involving crack cocaine, where the Federal Guidelines were not used in computing his sentence; defendant was sentenced under the District of Columbia Sentencing Guidelines. *United States v. Stewart*, 675 F.Supp.2d 86, 2009 U.S. Dist. LEXIS 120658 (2009).

Statute under which mandatory minimum sentence increases according to defendant's prior drug convictions did not irreconcilably conflict with statute prohibiting increasing defendant's punishment based on convictions not included in United States Attorney's pretrial information and, thus, there was no implied repeal of statute prohibiting increased punishment. D.C. Code 1981, §§ 23-111, 33-541(c)(1)(A-1). *Lucas v. United States*, 602 A.2d 1107, 1992 D.C. App. LEXIS 35 (1992).

Counsel for accused.

— Adequacy of representation.

Assistance of defense counsel was not inadequate because of refusal, on tactical and other grounds, to cross-examine the Government's principal witness who was 15 years old at time of offense and 16 at time of trial, where it was apparent that had such witness testified further, there was a strong likelihood she would have testified to additional facts that would have supplied factual elements from which jury might have found both defendants guilty of first-degree felony murder or premeditated murder as well as armed robbery and robbery instead of only second-degree murder. D.C. Code §§ 22-2401, 22-2403, 22-2902, 22-3202, 22-3204. *United States v. Clayborne*, 509 F.2d 473, 1974 U.S. App. LEXIS 5639 (C.A.D.C. 1974).

Assistance of defense counsel in prosecution for first-degree murder and robbery was not inadequate for failure to cross-examine the Government's principal witness who was 15 years old at time of offense and 16 at time of trial which failure was attributable to a failure to interview the witness or do adequate research, where record disclosed that counsel had adequate knowledge of the facts, counsel were skilled and experienced, and their tactics were highly successful in that they secured acquittals on two first-degree murder charges for each defendant and also acquittals on both robbery charges. D.C. Code §§ 22-2401, 22-2403, 22-2902, 22-3202, 22-3204. *United States v. Clayborne*, 509 F.2d 473, 1974 U.S. App. LEXIS 5639 (C.A.D.C. 1974).

Where record unequivocally established that, after three years of representing defendant, defense counsel concurred with conclusions reached by psychiatrist and judge that defendant was a malingerer and expressed opinion that it was tactically unwise to raise an insanity defense unless he felt he had a chance, defendant was not entitled to reversal of conviction of armed robbery assault with a deadly weapon and carrying a pistol without a license on ground of judicial interference with his defense counsel's attempt to pursue insanity issue. D.C. Code §§ 22-502, 22-2901, 22-3202, 22-3204, 24-301(a). *United States v. Simms*,

463 F.2d 1273, 1972 U.S. App. LEXIS 9318 (C.A.D.C. 1972).

Defendant failed, in moving on ineffective assistance grounds to vacate convictions for offenses including murder and armed robbery, to demonstrate that trial counsel performed deficiently in failing to present alibi witnesses; trial counsel hired investigators to follow up on all leads as to alibi witnesses, there were many inconsistencies among alibi witnesses and defendant as to defendant's whereabouts on night of charged incident, and defendant admitted to counsel that he was present at crime scene when told that his fingerprint was on magazine of gun found at scene of shootings. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Any deficiency in trial counsel's performance in failing to present alibi witnesses in murder and armed robbery prosecution was not prejudicial and thus did not support ineffective assistance claim, particularly considering government's strong case against defendant and the many defects in his claimed alibi defense. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Trial court erred in denying defendant's motion for new trial without evidentiary hearing, following convictions for kidnapping while armed, armed robbery, assault with intent to commit rape while armed, and possession of firearm during crime of violence, basis of which motion was ineffective assistance of counsel, where court made credibility determination that defendant had not provided names of exculpatory witnesses without hearing testimony from anyone who had any direct knowledge regarding this disputed fact, as trial attorney never denied or admitted that defendant had provided names, investigator did not testify, and defendant was not permitted to be present. *Arrington v. United States*, 804 A.2d 1068, 2002 D.C. App. LEXIS 483 (2002).

Trial counsel's failure to secure testimony of eyewitness who had testified unequivocally, and apparently with credibility, in prior proceeding that defendant was not involved in the murder was ineffective assistance of counsel, even if defendant, who had been subject of pretrial incarceration for well over three and one-half years, apparently decided to go ahead without eyewitness. U.S.C. Const. Amend. 6; D.C. Code 1981, §§ 22-2401 to 22-3202. *Fredrick v. United States*, 741 A.2d 427, 1999 D.C. App. LEXIS 277 (1999).

Defendant was not prejudiced by defense counsel's erroneous advice regarding prosecutor's plea offer, as required to support ineffective assistance claim; defendant was convicted of same offense to which he claimed he would have pled guilty had he been correctly advised and was subject to same penalties. U.S. Const. Amend. 6; D.C. Code 1981, §§ 22-2403,

22-3202. *Smith v. United States*, 686 A.2d 537, 1996 D.C. App. LEXIS 259 (1996), writ of certiorari denied by 522 U.S. 839, 118 S. Ct. 115, 139 L. Ed. 2d 67, 1997 U.S. LEXIS 5021, 66 U.S.L.W. 3257 (1997).

In proceeding in which defendant was convicted of second-degree murder while armed and of carrying pistol without license and in which defense counsel unsuccessfully sought to be permitted to elicit hearsay testimony from officer in regard to a declarant's alleged statement that specified individual other than defendant had shot victim, counsel's failure to secure attendance of declarant, who was absent from the jurisdiction, was not a denial of effective assistance of counsel. D.C. Code §§ 22-2403 to 22-3202, 22-3204; U.S. Const. Amend. 6. *Jackson v. United States*, 424 A.2d 40, 1980 D.C. App. LEXIS 416 (1980), writ of certiorari denied by 454 U.S. 1127, 102 S. Ct. 979, 71 L. Ed. 2d 116, 1981 U.S. LEXIS 3006, 50 U.S.L.W. 3487 (1981).

Defendant, who was convicted of armed robbery and whose counsel elicited testimony in support of defendant's misidentification and alibi defenses, presented such defenses to jury in opening and closing arguments, may have decided not to produce character witnesses in order to preclude introduction of defendant's prior arrests into evidence and gave a sufficient opening statement after Government presented its case, was not shown to have been denied effective assistance of counsel. D.C. Code §§ 22-2901, 22-3202; U.S. Const. Amend. 6. *Fitzhugh v. United States*, 415 A.2d 548, 1980 D.C. App. LEXIS 304 (1980).

Accused, who was convicted of armed robbery, assault with a dangerous weapon, assault on police officer and possession of prohibited weapon and who asserted that there had been inadequate preparation by his trial counsel, was not denied his right to effective assistance of counsel, absent any indication of any substantial defense which accused might have advanced and which was excluded as result of such alleged lack of preparation. D.C. Code §§ 22-502, 22-505(a), 22-2901, 22-3202, 22-3214(a); U.S. Const. Amend. 6. *White v. United States*, 358 A.2d 645, 1976 D.C. App. LEXIS 279 (1976).

Failure to preserve, for appeal, the issue whether trial court erred in allowing in-court identifications of accused, who were convicted of armed robbery, assault with a dangerous weapon, assault on police officer and possession of prohibited weapon, did not deny effective assistance of counsel where sole ground advanced for suppression of in-court identifications was the failure of government to conduct pretrial lineups and there was no indication that on-scene confrontations between accused and government witnesses were tainted by any impermissible police procedure. D.C. Code

§§ 22-502, 22-505(a), 22-2901, 22-3202, 22-3214(a); U.S. Const. Amends. 5, 6; D.C. Code SCR, Criminal Rule 12(b)(3). *White v. United States*, 358 A.2d 645, 1976 D.C. App. LEXIS 279 (1976).

— Critical stage, counsel for accused.

Fact that defendant was already in custody on charge of possession of a sawed-off shotgun did not preclude the police from conducting, in the absence of counsel, a photographic identification in order to link defendant with armed robbery. U.S. Const. Amend. 6; D.C. Code §§ 22-2901, 22-3202(a). *United States v. Jackson*, 509 F.2d 499, 1974 U.S. App. LEXIS 5687 (C.A.D.C. 1974).

Police interrogation of defendant, who was represented by counsel on charge of assault with intent to kill while armed, about unrelated murder of corrections officer did not violate defendant's Sixth Amendment right to counsel, though he was subsequently charged with the murder; defendant's right to counsel did not attach, as no murder prosecution was initiated against him at the time of the interrogation. *Sweet v. United States*, 756 A.2d 366, 2000 D.C. App. LEXIS 118 (2000).

That defendant attempted to obtain a deal that would dismiss charge of assault with intent to kill while armed, for which he was represented by counsel, in exchange for aiding police in murder investigation did not create an exception to rule that right to counsel attached upon commencement of prosecution, and thus, interrogation regarding the murder was not precluded on Sixth Amendment grounds, though defendant was charged with the murder after the interrogation, where there was no known relationship between the assault and the murder at the time of questioning. *Sweet v. United States*, 756 A.2d 366, 2000 D.C. App. LEXIS 118 (2000).

Defendant's conviction of kidnapping while armed and armed robbery did not have to be reversed, based on prosecution's alleged failure to provide defense during discovery with certain incriminating statements allegedly made by defendant to police officer; error, if any, was not clear or obvious, and there was no miscarriage of justice. D.C. Code 1981, §§ 22-2101, 22-2901, 22-3202. *Quallis v. United States*, 654 A.2d 1281, 1995 D.C. App. LEXIS 41 (1995).

Where victims' identification of defendant charged with armed robbery and assault with a dangerous weapon was reliable, where photograph of lineup showed little suggestivity, and where photograph of lineup was introduced into evidence at trial and defense counsel had the opportunity to, and did, argue to the jury that the lineup was suggestive, any error in attorney's failure to represent defendant at lineup due to his being informed that defendant was not in lineup and his failure to recognize

defendant in lineup was harmless. D.C. Code §§ 22-502, 22-2901, 22-3202. *Washington v. United States*, 377 A.2d 1348, 1977 D.C. App. LEXIS 382 (1977).

— Number of counsel, counsel for accused.

Defense counsel's prior representation of client who was suspected of involvement in murders for which defendant stood trial did not create "actual conflict of interest," where prior representation concerned unrelated criminal charges, client was not a defendant at defendant's trial, there was no indication that counsel was ever in a position to use confidential information obtained from client in defendant defense, and client was not called as witness. U.S. Const.Amend. 6; D.C. Code 1981, §§ 22-2401, 22-3202. *Veney v. United States*, 738 A.2d 1185, 1999 D.C. App. LEXIS 203 (1999).

Fact that there was not more extensive plea bargaining did not demonstrate that defense counsel's representation of defendant was actually affected by alleged conflict of interest arising from alleged payment of counsel's fees for representing defendant by counsel's former client who was suspected of involvement in murders for which defendant stood trial, and thus, no violation of right to counsel free from conflict occurred; plea bargaining negotiations did occur, it appeared from record that it was defendant who did not follow through with regard to plea bargain, and counsel was concerned over collateral litigation concerning terms of any oral plea offer. U.S. Const.Amend. 6; D.C. Code 1981, §§ 22-2401, 22-3202. *Veney v. United States*, 738 A.2d 1185, 1999 D.C. App. LEXIS 203 (1999).

Defense counsel's failure to pursue "blame-shifting" strategy did not demonstrate that counsel's representation of defendant was actually affected by alleged conflict of interest arising from alleged payment of counsel's fees for representing defendant by counsel's former client who was suspected of involvement in murders for which defendant stood trial, and thus, no violation of right to counsel free from conflict occurred, where, if counsel pursued strategy that highlighted former client's involvement in murders, that would have drawn defendant further into chain of inferences created by Government tending to show that defendant conspired with former client to kill victim. U.S. Const.Amend. 6; D.C. Code 1981, §§ 22-2401, 22-3202. *Veney v. United States*, 738 A.2d 1185, 1999 D.C. App. LEXIS 203 (1999).

Defense counsel's closing argument addressing former client's alleged involvement in murders did not demonstrate that counsel's representation of defendant was actually affected by alleged conflict of interest arising from former client's alleged payment of counsel's fees for representing defendant, and thus, no violation of right to counsel free from conflict occurred,

where Government presented evidence connecting defendant to former client and argued that former client was involved in murders, and thus, counsel had to address former client's involvement in murders in closing to be persuasive to jury. U.S. Const.Amend. 6; D.C. Code 1981, §§ 22-2401, 22-3202. *Veney v. United States*, 738 A.2d 1185, 1999 D.C. App. LEXIS 203 (1999).

Defense counsel's cross-examination of government witnesses did not demonstrate that counsel's performance was actually affected by alleged conflict of interest arising from alleged payment of counsel's fees for representing defendant by counsel's former client who was suspected of involvement in murders for which defendant stood trial, and thus, no violation of right to counsel free from conflict occurred, where counsel highlighted discrepancies between police officers' identifications and their grand jury testimony, counsel emphasized confusing circumstances surrounding shootings, and counsel attempted to discredit government witnesses. U.S. Const.Amend. 6; D.C. Code 1981, §§ 22-2401, 22-3202. *Veney v. United States*, 738 A.2d 1185, 1999 D.C. App. LEXIS 203 (1999).

Defense counsel's failure to call former client as witness did not demonstrate that counsel's representation of defendant was actually affected by alleged conflict of interest arising from alleged payment of counsel's fees for representing defendant by former client who was suspected of involvement in murders for which defendant stood trial, and thus, no violation of right to counsel free from conflict occurred, given that former client had Fifth Amendment privilege that he would surely have invoked. U.S. Const.Amend. 5, 6; D.C. Code 1981, §§ 22-2401, 22-3202. *Veney v. United States*, 738 A.2d 1185, 1999 D.C. App. LEXIS 203 (1999).

Different offenses in same transaction.

Even though defendant was actually sentenced to aggregate maximum of 12 years in prison, eight years less than he could have received for entry with intent to commit robbery under Federal Bank Robbery Act, and 13 years less than Act's aggravated robbery penalty, where defendant was convicted of entering federally insured bank with intent to commit robbery under Federal Bank Robbery Act and of local offense of assault for convictions stemming from a single course of criminal conduct, it was error to fragment the robbery and venture outside federal scheme, and therefore, conviction and sentencing of defendant for assault with dangerous weapon was invalid. 18 U.S.C. § 2113; D.C. Code 1973, § 22-502. *United States v. Leek*, 665 F.2d 383, 1981 U.S. App. LEXIS 17422 (C.A.D.C. 1981).

Fragmentation of single course of conduct to enable use of local statute to multiply convictions and enhance punishment is impermissible. *United States v. Leek*, 665 F.2d 383, 1981 U.S. App. LEXIS 17422 (C.A.D.C. 1981).

Where, during course of robbery of market, defendant robbed the property of the store owners and robbed a store employee of his own property, his wallet, the episode was not a "unitary transaction" but involved two distinct offenses. D.C. Code §§ 22-2901, 22-3202. *United States v. Diggs*, 522 F.2d 1310, 1975 U.S. App. LEXIS 12115 (C.A.D.C. 1975).

The Government was entitled to charge in the same indictment offenses against both federal bank robbery statute and District of Columbia armed robbery statute for the same bank robbery; but the defendant could not ultimately be sentenced under two statutes proscribing essentially the same offense. 18 U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Diggs*, 522 F.2d 1310, 1975 U.S. App. LEXIS 12115 (C.A.D.C. 1975).

The federal savings and loan robbery statute does not preclude a prosecution under District of Columbia law for the robbery of an institution falling within the jurisdiction of the federal statute. 18 U.S.C. §§ 2113(a), 3231; D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

In the absence of any contrary expression of congressional intent, it cannot be implied that Congress chose to allow dual prosecutions of bank or savings and loan robberies throughout the rest of the United States but prohibited the Government from ever electing to prosecute under local rather than federal law when the bank or savings and loan association is located in the District of Columbia. 18 U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

Assault with dangerous weapon upon motel clerk was lesser included offense of armed robbery of same person, and conviction of former could not stand as conviction for another offense. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Lee*, 509 F.2d 400, 1974 U.S. App. LEXIS 5476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 1006, 95 S. Ct. 1451, 43 L. Ed. 2d 765, 1975 U.S. LEXIS 1180 (1975).

Although a violation of the District of Columbia armed robbery statutes and a violation of the federal mail robbery statute required different elements of proof, and although, in the instant case, concurrent sentences were imposed, the conviction of defendants on both charges, arising from a single transaction, was improper, necessitating remand to the trial court with instructions to vacate the judgment on one of the counts and to resentence on the other count. 18 U.S.C. § 2114; D.C. Code

§§ 22-2901, 22-3202. *United States v. Lee*, 509 F.2d 400, 1974 U.S. App. LEXIS 5476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 1006, 95 S. Ct. 1451, 43 L. Ed. 2d 765, 1975 U.S. LEXIS 1180 (1975).

Assault with dangerous weapon was lesser included offense in armed robbery offense, and additional convictions for assault with dangerous weapon would accordingly be vacated where defendant had been convicted on three armed robbery counts. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Kearney*, 498 F.2d 61, 1974 U.S. App. LEXIS 8584 (C.A.D.C. 1974).

Inasmuch as assault with a dangerous weapon is included in armed robbery, and defendant was convicted of both offenses, judgments and sentences for assault with a dangerous weapon were required to be vacated. *United States v. Anderson*, 490 F.2d 785, 1974 U.S. App. LEXIS 10723 (C.A.D.C. 1974).

Assault with dangerous weapon was lesser included offense of armed robbery; thus, defendants could not be convicted of both three counts of armed robbery and three counts of assault with a deadly weapon and convictions of assault would be reversed. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. McKinley*, 485 F.2d 1059, 1973 U.S. App. LEXIS 7985 (C.A.D.C. 1973).

Where robbery constituted a unitary transaction, defendant could not properly be convicted and sentenced on two robbery counts. 18 U.S.C. § 2113(a); 18 U.S.C. § 292(c); D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Hopkins*, 464 F.2d 816, 1972 U.S. App. LEXIS 8848 (C.A.D.C. 1972).

Defendant could not be convicted of both armed first-degree felony murder and armed first-degree premeditated murder of same victim. D.C. Code 1981, §§ 22-2401, 22-3202. *Lane v. United States*, 737 A.2d 541, 1999 D.C. App. LEXIS 209 (1999).

Defendant could not be convicted of both second-degree murder as aider and abettor and second-degree murder under conspiracy theory where there was only one victim. D.C. Code 1981, §§ 22-2403, 22-3202. *Lyons v. United States*, 683 A.2d 1080, 1996 D.C. App. LEXIS 306 (1996).

Defendant could not be convicted of both first-degree murder while armed and second-degree murder while armed where there was only one killing. D.C. Code 1981, §§ 22-2401, 22-3202. *Henderson v. United States*, 678 A.2d 20, 1996 D.C. App. LEXIS 107 (1996).

Defendant could not be convicted of felony-murder in addition to armed premeditated murder where only one killing was involved and, thus, felony-murder conviction would be vacated. *Mitchell v. United States*, 629 A.2d 10, 1993 D.C. App. LEXIS 174 (1993), writ of certiorari denied by 510 U.S. 1138, 114 S. Ct.

1119, 127 L. Ed. 2d 429, 1994 U.S. LEXIS 1823, 62 U.S.L.W. 3553 (1994).

Under statute providing that no person shall possess pistol or any other firearm while committing crime of violence or dangerous crime, where defendant's convictions for assault with dangerous weapon and attempted armed robbery merge to become one "crime of violence or dangerous crime," there can be only one associated offense of possession of firearm during crime of violence. D.C. Code 1981, §§ 22-502, 22-2901, 22-3204(b). *Morris v. United States*, 622 A.2d 1116, 1993 D.C. App. LEXIS 79 (1993), writ of certiorari denied by 510 U.S. 899, 114 S. Ct. 270, 126 L. Ed. 2d 221, 1993 U.S. LEXIS 6183, 62 U.S.L.W. 3252 (1993).

When two statutes allow different penalties for same act, prosecutor has discretion in selecting which of two statutes to apply, so long as selection does not discriminate against any class of defendants. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

Defendant could be convicted of two separate counts of robbery where defendant pointed pistol at two women while accomplices removed cash from cash boxes on counter of store, even though property was not taken from person of either woman, where separate acts of violence were required to prevent women from retaining control of property for which they were responsible. D.C. Code 1981, §§ 22-501, 22-2901, 22-3202. *Davis v. United States*, 498 A.2d 242, 1985 D.C. App. LEXIS 490 (1985).

Where complainant was initially accosted and robbed on well-lighted street in front of her home and she was taken over 200 yards to darkened secluded spot and spent approximately one hour with defendant, asportation was not integral part of rape, and defendant could be convicted both for kidnapping and for rape, as well as robbery. D.C. Code 1981, §§ 22-2101, 22-2801, 22-2901, 22-3202. *Boyd v. United States*, 473 A.2d 828, 1984 D.C. App. LEXIS 328 (1984).

Convictions of both attempted robbery while armed and of assault with a dangerous weapon, arising out of same incident, were proper in view of fact that each offense clearly required proof of a fact that other did not because offenses were directed against different victims. D.C. Code 1981, §§ 22-502, 22-2402, 22-3202. *Adams v. United States*, 466 A.2d 439, 1983 D.C. App. LEXIS 483 (1983).

Offense of assault with a deadly weapon must be set aside as a lesser included offense of armed robbery only when conviction for armed robbery arose out of same act of defendant. D.C. Code §§ 22-502, 22-2901, 22-3202. *Davis v. United States*, 367 A.2d 1254, 1976 D.C. App. LEXIS 448 (1976), writ of certiorari denied by 434 U.S. 847, 98 S. Ct. 154, 54 L. Ed. 2d 114, 1977 U.S. LEXIS 3112 (1977).

Conviction of assault with a deadly weapon would not be set aside as a lesser included offense of armed robbery, where jury's conviction of assault with a deadly weapon of necessity included finding that assault occurred after conclusion of all earlier crimes, including armed robbery. D.C. Code §§ 22-502, 22-2901, 22-3202. *Davis v. United States*, 367 A.2d 1254, 1976 D.C. App. LEXIS 448 (1976), writ of certiorari denied by 434 U.S. 847, 98 S. Ct. 154, 54 L. Ed. 2d 114, 1977 U.S. LEXIS 3112 (1977).

Incident in which robbers took money in cash register from sales clerk and took money orders and food stamps from sales clerk's purse involved separate transactions on which conviction of two counts of armed robbery could be based. D.C. Code §§ 22-2901, 22-3202. *Jones v. United States*, 362 A.2d 718, 1976 D.C. App. LEXIS 349 (1976).

Where, in course of armed robbery, shotgun was pointed at two distinct individuals at different times, there was no error in entering separate judgments of conviction of armed robbery and assault with dangerous weapon. D.C. Code §§ 22-502, 22-2901, 22-3202. *Borrero v. United States*, 332 A.2d 363, 1975 D.C. App. LEXIS 324 (1975).

It was improper to convict defendant both for assault with a dangerous weapon and armed robbery where the assault was a necessary part of the evidence needed to support the count of armed robbery. D.C. Code §§ 22-502, 22-2901, 22-3202. *Taylor v. United States*, 324 A.2d 683, 1974 D.C. App. LEXIS 259 (1974).

Housebreaking and robbery convictions can stand together since robbery and burglary statutes which codify common law protect distinct societal interests. D.C. Code §§ 22-1801(a), 22-2901, 22-3202. *Dixon v. United States*, 320 A.2d 318, 1974 D.C. App. LEXIS 215 (1974).

Discovery.

Defendant was not entitled, in prosecution for possessory drug and weapons offenses, to disclosure of confidential informant's identity; informant's sighting of guns in apartment as much as six days earlier provided only conjecture as to who owned or possessed them when found at time of search, and defendant proffered nothing to suggest that anyone known to informant was exercising exclusive dominion or control, to the exclusion of defendant, over the gun and cocaine found in defendant's immediate company. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Double jeopardy.

Conviction under federal statute criminalizing retaliation against witnesses, victims and informants, and District of Columbia statute criminalizing assault with intent to kill while armed, did not violate Double Jeopardy Clause; retaliation provision required intent to retali-

ate, not present in assault with intent provision, while assault provision required proof of intent to kill and that offender was armed, not required for retaliation conviction, and there was no indication that Congress intended both provisions to apply. U.S. Const.Amend. 5; 18 U.S.C. § 1513(b); D.C. Code 1981, §§ 22-501, 22-3202. *United States v. McLaughlin*, 164 F.3d 1, 1998 U.S. App. LEXIS 31488 (C.A.D.C. 1998), writ of certiorari denied by 526 U.S. 1079, 119 S. Ct. 1485, 143 L. Ed. 2d 567, 1999 U.S. LEXIS 2792, 67 U.S.L.W. 3642 (1999).

Double jeopardy clause prohibits successive prosecutions in the District of Columbia for violations of federal and District of Columbia law arising from the same bank or savings and loan robbery, but it does not require that prosecution under the federal scheme be preferred to prosecution under local statutes, so long as only a single prosecution takes place. 18 U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

Where defendant did not raise at his second trial the issue that his acquittal of armed robbery at first trial was acquittal of unarmed robbery as well, defendant waived the defense of double jeopardy. D.C. Code §§ 22-502, 22-2901, 22-3202; Fed.Rules Crim.Proc. rule 12(b)(2), 18 U.S.C. *United States v. Scott*, 464 F.2d 832, 1972 U.S. App. LEXIS 8719 (C.A.D.C. 1972).

Conviction of defendant of the federal offense of obstructing justice in assaulting with intent to kill a federal witness, and of District of Columbia offense of assault with intent to kill while armed, did not violate double jeopardy. *United States v. Vargas*, 39 Fed.Appx. 612, 2002 U.S. App. LEXIS 11464 (C.A.D.C. 2002), writ of certiorari denied by 537 U.S. 1038, 123 S. Ct. 573, 154 L. Ed. 2d 459, 2002 U.S. LEXIS 8611, 71 U.S.L.W. 3352 (2002).

Counts of indictment charging assault with a dangerous weapon (ADW) merged with armed robbery counts for double jeopardy purposes, such that convictions for ADW and for corresponding counts of possession of a firearm during a crime of violence (PFCV) would be vacated. *Kaliku v. United States*, 994 A.2d 765, 2010 D.C. App. LEXIS 261 (2010).

Imposition of enhanced sentences for defendant's offenses in prosecution for gun-related offenses did not violate double jeopardy, even though defendant was on pretrial release at time he committed gun-related offenses; defendant's commission of gun-related offenses were distinct and separate. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Defendant's convictions for aggravated assault while armed (AAWA) and assault with intent to kill while armed (AWIKWA), arising from shooting of occupant of vehicle, did not merge under Blockburger test prohibiting duplicative prosecution for same offense pursuant to double jeopardy principles, where elements of proof and underlying facts were not the same for AAWA and AWIKWA. U.S. Const.Amend. 5; D.C. Code 1981, §§ 22-501, 22-504.1, 22-3202. *Nixon v. United States*, 730 A.2d 145, 1999 D.C. App. LEXIS 88 (1999), writ of certiorari denied by 528 U.S. 899, 120 S. Ct. 233, 145 L. Ed. 2d 196, 1999 U.S. LEXIS 6211, 68 U.S.L.W. 3230 (1999).

If assault and armed robbery charges are triggered by separate acts, convictions do not merge for double jeopardy purposes. D.C. Code 1981, §§ 22-502, 22-2901, 22-3202; U.S.C. Const.Amend. 5. *Simms v. United States*, 634 A.2d 442, 1993 D.C. App. LEXIS 304 (1993).

Assault with dangerous weapon conviction merged, for double jeopardy purposes, with armed robbery conviction; victim was struck with hard object to quiet him during robbery, perpetrators were still transporting proceeds of robbery, perpetrators had previously threatened victim with bodily harm, and there was no indication that robbery had ended when victim was struck. D.C. Code 1981, §§ 22-502, 22-2901, 22-3202; U.S. Const.Amend. 5. *Simms v. United States*, 634 A.2d 442, 1993 D.C. App. LEXIS 304 (1993).

Defendant's convictions for burglary, premeditated murder, and robbery arising from single criminal transaction did not merge, so as to trigger double jeopardy protection; the three convictions required separate and distinct elements of proof. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-2901, 22-3202; U.S.C. Const.Amend. 5. *Bennett v. United States*, 620 A.2d 1342, 1993 D.C. App. LEXIS 44 (1993).

Simultaneous violation of statute defining crime of possession of a firearm during a dangerous crime and statute enhancing penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon does not constitute a single offense for double jeopardy purposes, and resulting convictions do not merge; second statute requires proof that perpetrator exercise a degree of dominion and control not required for conviction under first statute; also, first statute requires proof that instrument possessed was either a firearm or an imitation firearm, while second statute proscribes any instrument found to be a dangerous weapon, which can include but is not limited to firearms and their imitations; thus, each provision requires proof of a fact not required under the other. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Thomas v. United States*, 602 A.2d 647, 1992 D.C. App. LEXIS 23 (1992).

Punishment for both first-degree burglary while armed and first-degree felony-murder^{*} predicated on armed robbery did not violate double jeopardy clause, where armed burglary charge required government to prove at least one fact that felony-murder did not, i.e., that defendant entered dwelling or other building, apartment or room, and felony-murder charge required proof of at least one fact that armed burglary did not, i.e., that defendant killed another person. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-2401, 23-112; U.S. Const.Amend. 5. *Waller v. United States*, 531 A.2d 994, 1987 D.C. App. LEXIS 456 (1987).

Double jeopardy did not bar subsequent prosecution for second-degree murder of defendant who had been acquitted of assault with intent to kill while armed arising from same incident and involving same victim, where victim had not died at time defendant was prosecuted for assault, and jury at first trial was not presented with question of malice. D.C. Code 1981, §§ 22-501, 22-502, 22-2403, 22-3202; U.S. Const.Amend. 5. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

Offenses of assault with intent to kill and malicious disfigurement are governed by separate statutes and each statutory provision requires proof of element which other does not. D.C. Code 1981, §§ 22-501, 22-506, 22-3202. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

Shooting of victim following attempted robbery of victim invaded separate interest and therefore was separate offense, and thus, imposition of consecutive sentences for convictions of assault with intent to commit robbery while armed and assault with dangerous weapon was permissible under double jeopardy clause. D.C. Code 1981, §§ 22-501, 22-502, 22-3202, 23-112; U.S. Const.Amend. 5. *Owens v. United States*, 497 A.2d 1086, 1985 D.C. App. LEXIS 477 (1985), writ of certiorari denied by 474 U.S. 1085, 106 S. Ct. 861, 88 L. Ed. 2d 900, 1986 U.S. LEXIS 1161, 54 U.S.L.W. 3484 (1986).

Defense counsel did not waive defendant's right to assert double jeopardy claim merely by agreeing to two proposed second-degree murder instructions, one as lesser included offense of first-degree murder and other as lesser included offense of felony-murder, in absence of any statement or implication by defendant that if he was acquitted on one, he would not thereafter argue collateral estoppel or double jeopardy as to the other and in view of fact that case involved single course of conduct which could be prosecuted only as one offense, except to extent of prosecution for lesser-included offense. D.C. Code 1973, §§ 22-103, 22-2401, 22-3202; U.S. Const.Amend. 5. *Turner v. United*

States, 459 A.2d 1054, 1983 D.C. App. LEXIS 355 (1983).

Effect of proceedings after attachment of jeopardy.

Reversal of defendant's convictions of manslaughter while armed and of carrying pistol without license did not preclude new trial on same charges, where reversal was based on prosecutorial misconduct and not on evidentiary insufficiency and was unrelated to defendant's guilt or innocence. U.S. Const.Amend. 5; D.C. Code 1981, §§ 22-2405, 22-3202, 22-3204. *Coreas v. United States*, 585 A.2d 1376, 1991 D.C. App. LEXIS 30 (1991), writ of certiorari denied by 502 U.S. 855, 112 S. Ct. 167, 116 L. Ed. 2d 130, 1991 U.S. LEXIS 4310, 60 U.S.L.W. 3261 (1991).

Including evidence wrongfully admitted in violation of the confrontation clause, evidence was sufficient to withstand motion for judgment of acquittal; therefore, the double jeopardy clause did not prevent retrial after conviction was reversed based on the erroneous admission of evidence, in prosecution for felony-murder, armed robbery, and carrying a pistol without a license. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202, 22-3204; U.S. Const.Amend. 5, 6. *Thomas v. United States*, 557 A.2d 599, 1989 D.C. App. LEXIS 61 (1989).

Reinstatement of jury verdict of guilty on charge of armed robbery was not barred by double jeopardy, even though trial court had reduced conviction to petit larceny upon ruling indictment had insufficiently specified crime of armed robbery, where Court of Appeals held that indictment was sufficient as to charge of armed robbery. D.C. Code 1981, §§ 22-2901, 22-3202; Criminal Rules 7(c), 34; U.S. Const.Amend. 5. *United States v. Bradford*, 482 A.2d 430, 1984 D.C. App. LEXIS 505 (1984).

Double jeopardy clause does not insulate defendant from standing trial again after he has successfully invoked statutory right of appeal to upset his first conviction, on any ground other than insufficiency of evidence to support the verdict, and criminal defendant who was successful in having his conviction set aside on grounds of trial error, though he had served sentence imposed, was not placed in double jeopardy by second trial on same indictment. U.S. Const.Amend. 5, 6; D.C. Code 1981, §§ 14-305, 22-104, 22-104(a), 22-501, 22-3202(a)(2), 22-3203(a)(2), 22-3501(a, b), 23-1322(a)(1, 2), 23-1331(3)(D), (4), 24-203(b). *Fitzgerald v. United States*, 472 A.2d 52, 1984 D.C. App. LEXIS 314 (1984).

Examination of witnesses.

— Competency of witnesses, examination of witnesses.

Trial court, which denied a defense motion during trial to have key prosecution witness,

who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding the claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. D.C. Code §§ 22-501, 22-2401, 22-2403, 22-2801, 22-3202. *United States v. Heinlein*, 490 F.2d 725, 1973 U.S. App. LEXIS 7581 (C.A.D.C. 1973).

Trial court properly rejected attempt by two witnesses who were unfamiliar with defendant's reputation as to character traits in issue in robbery and assault case to testify as to his character. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Hinkle*, 448 F.2d 1157, 1971 U.S. App. LEXIS 8860 (C.A.D.C. 1971).

Prosecutor who called robbery victims to testify despite victims' expressed inability to recall events was entitled to continue questioning victims in order to probe memory and test recollection in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

In criminal prosecution, trial court applied proper legal standard for ascertaining competency of child to testify regarding murder, although voir dire focused almost exclusively on child's capacity to understand difference between truth and falsehood and to appreciation of duty to tell truth, where trial court's own question at voir dire as to child's ability to remember back to date of murder followed by court's observations and findings immediately after child's testimony at trial and again in posttrial order clearly covered determination of child's ability to recollect events about which she testified. D.C. Code §§ 22-2403, 22-3202, 22-3203. *Smith v. United States*, 414 A.2d 1189, 1980 D.C. App. LEXIS 290 (1980).

— Confrontation of witnesses, examination of witnesses.

Trial court's holding criminal contempt hearing of recalcitrant witness outside the presence of the jury, in prosecution for aggravated assault while armed and assault with a dangerous weapon, did not deprive defendant of his Sixth Amendment right of confrontation, as the contempt hearing was not part of the prosecution of the defendant, but a proceeding against the witness. *Martin v. United States*, 756 A.2d 901, 2000 D.C. App. LEXIS 172 (2000).

The admission of statements by non-testifying codefendants did not violate defendant's Sixth Amendment confrontation rights, in prosecution for voluntary manslaughter; there was

no reference to defendant's existence or participation in the offense because the statements did not introduce the names or descriptions of individual participants, and the statement's use of the plural neutral pronoun, "we," when referring to the group that attacked the victim, in no way specifically linked defendant to the crime because there was no dispute that the incident was a group assault. U.S. Const. Amend. 6; D.C. Code 1981, §§ 22-2405, 22-3202. *Plater v. United States*, 745 A.2d 953, 2000 D.C. App. LEXIS 38 (2000).

Murder defendant's confrontation clause rights were not violated by decision to allow witness to testify for government while denying defendant opportunity to cross-examine witness for bias after witness had invoked his Fifth Amendment privilege against testifying concerning previous altercation in which witness and victim had allegedly shot at defendant, where defense counsel made rather weak showing of why cross-examination was necessary, only real bias issue related to witness' hostility toward defendant arising out of his involvement in shooting, jury was made fully aware of witness' role in previous shooting incident, witness was subject to extensive cross-examination on all other subjects, and prosecution presented another witness to shooting incident whose Fifth Amendment rights were not implicated and who was subject to unlimited cross-examination. U.S.C. Const. Amends. 5, 6; D.C. Code 1981, §§ 22-2401, 22-3202. *McClellan v. United States*, 706 A.2d 542, 1997 D.C. App. LEXIS 136 (1997), writ of certiorari denied by 524 U.S. 910, 118 S. Ct. 2073, 141 L. Ed. 2d 149, 1998 U.S. LEXIS 3677, 66 U.S.L.W. 3773 (1998).

Prosecutor's leading questions which were asked despite victims' inability to recall events, but which did not constitute only direct evidence against defendant, did not violate defendant's Sixth Amendment right to confront witnesses in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204; U.S. Const. Amends. 5, 6. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Trial judge's actions in murder and kidnapping prosecution in cutting off defense counsel before she completed her questioning of a witness as to what the witness had told her at jail on a previous occasion, in order to keep defense counsel from putting herself in a position where she could be called to testify, did not violate defendant's right to confront witnesses against him. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202; U.S. Const. Amend. 6. *Ford v. United*

States, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

In prosecution for armed burglary, armed robbery, and assault, trial court's ruling curtailing in limine defense counsel's inquiry of complainant concerning her possible status as a police informant in other cases, which allegedly would have caused jury to view her testimony with skepticism, was not an abridgement of defendant's Sixth Amendment right to confrontation, in that such evidence was not relevant given fact that complainant's status was that of a crime victim rather than that of a provider of information regarding criminal activities of others and fact that jury had before it complainant's admission that she engaged in after-hours sale of cigarettes and liquor contrary to law. D.C. Code §§ 22-502, 22-1801, 22-2901, 22-3202, 25-102 et seq.; U.S. Const. Amend. 6. *Smith v. United States*, 389 A.2d 1364, 1978 D.C. App. LEXIS 543 (1978).

— Credibility and impeachment, examination of witnesses.

Refusal, in criminal prosecution, to admit testimony regarding effect of drug use on perception for purposes of impeaching testimony of accomplice, who testified for government and who was a heroin user, unless it was established that accomplice had used narcotics on day of offenses was not error. D.C. Code §§ 22-1801(b), 22-2401, 22-2901, 22-3202. *United States v. Leonard*, 494 F.2d 955, 1974 U.S. App. LEXIS 10300 (C.A.D.C. 1974).

Denial of defendants' motions for new trial that were predicated on alleged newly discovered evidence in form of letter from co-defendant claiming that defendants had nothing to do with charged events was not abuse of discretion in prosecution for offenses including murder and armed robbery; evidence of defendants' guilt was strong, and credibility of co-defendant would have been seriously undermined at new trial by impeaching evidence. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Record did not show prosecutorial misconduct in implying, during opening statement in assault prosecution arising from shooting, that alleged accomplice would testify that he furnished gun with which defendant allegedly fired shots, and then failing to present that testimony after alleged accomplice invoked privilege against self-incrimination in connection with a self-incriminating letter he had written; foreseeability that alleged accomplice might invoke Fifth Amendment privilege did not show bad faith on government's part, and government subsequently conceded it had no direct proof that alleged accomplice succeeding in conveying gun to defendant. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by

538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Without proper evidentiary foundation for questions about complaining witness' drug use at time of rape incident, trial judge did not abuse her discretion in concluding that such questions would be more prejudicial than probative, and thus inadmissible. (Per Reid, J., with two Judges concurring.) D.C. Code 1981, § 22-3202; § 22-2801 (repealed). *Bolanos v. United States*, 718 A.2d 532, 1998 D.C. App. LEXIS 186 (1998).

Trial court did not abuse its discretion by failing to allow full exploration, in rape prosecution, of complaining witness' status as person in need of supervision (PINS); court reviewed witness' PINS jacket in camera and concluded that it dealt primarily with family neglect of witness and her "community placement" rather than with her moral turpitude or dishonesty, and nonetheless, court permitted defense counsel to cross-examine witness regarding bias, credibility, and lifestyle. (Per Reid, J., with two Judges concurring.) D.C. Code 1981, § 22-3202; § 22-2801 (repealed). *Bolanos v. United States*, 718 A.2d 532, 1998 D.C. App. LEXIS 186 (1998).

Government could impeach its own witness in prosecution for assault with intent to kill while armed with her prior inconsistent grand jury statements identifying defendant as assailant, as it had been taken by surprise by witness' recantation of her previous sworn testimony. D.C. Code 1981, §§ 22-501, 22-3202. *Price v. United States*, 545 A.2d 1219, 1988 D.C. App. LEXIS 106 (1988).

There was sufficient inconsistency between murder defendant's omission to tell police of her encounter with murder victim on day of his death when she waived her Miranda rights and talked to police and her testimony at trial to make it permissible for the state to impeach defendant on the basis of her omission, since under the circumstances it would have been natural for defendant to mention fact that she had been with the victim on the day of his death, and since defendant knew that the murder victim had been killed only hours after she saw him alive. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

Through cross-examination of witnesses in prosecution for felony-murder and first-degree burglary on subject of their plea agreement, defense counsel suggested that witnesses had a motive to lie at trial, and thereby triggered application of rules which permit admission of prior consistent statements, for purposes of determining whether such prior consistent statements were properly admitted. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *Williams v. United States*, 483 A.2d 292,

1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

Trial court in prosecution for felony-murder and first-degree burglary erred in admitting previous statements of three prosecution witnesses during redirect to rehabilitate their testimony after defense counsel suggested that witnesses had a motive to lie at trial, where prior statements were made to law enforcement officials at a time when witnesses were under arrest and knew that they could be tried for first-degree murder, and thus, had a motive to lie to the detective who took the statements. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

In prosecution for rape, trial court did not abuse its discretion in permitting Government to impeach testimony of police officer who testified for defendant, by eliciting evidence that tended to show officer's bias against the Government because of the criticism officer received concerning her investigation of the case, since inquiry into this matter was within wide range of information that would be of potential value to jury in assessing officer's credibility. D.C. Code 1981, §§ 22-2801, 22-3202. *Staton v. United States*, 466 A.2d 1245, 1983 D.C. App. LEXIS 497 (1983).

In prosecution for attempted robbery, burglary, assault, and murder, trial court did not err in denying defendant's pretrial motion to limit his impeachment to fact but not nature of his prior convictions. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2401, 22-2402, 22-3202, 22-3204. *Staton v. United States*, 466 A.2d 1245, 1983 D.C. App. LEXIS 497 (1983).

— Cross-examination, examination of witnesses.

Police officer's report and broadcast transcript could properly be used to cross-examine taxi driver, in prosecution for robbery of the taxi driver, so as to lay foundation for his anticipated subsequent impeachment by the officer who made the records. D.C. Code §§ 22-2901, 22-3202. *United States v. Smith*, 521 F.2d 957, 1975 U.S. App. LEXIS 12262 (C.A.D.C. 1975).

Testimony about assault in which defendant pointed gun at Government witness and pulled trigger was admissible on redirect examination of witness, despite the risk of prejudice, where defendant attempted, on cross-examination of witness, to discredit witness's more limited testimony about having merely seen defendant with a gun prior to robbery and murder of victim. D.C. Code 1981, §§ 22-2401, 22-2901,

22-3202. *Busey v. United States*, 747 A.2d 1153, 2000 D.C. App. LEXIS 63 (2000).

Prosecutor's opening questions on cross-examination of defendant's character witnesses in prosecution for murder and kidnapping, as to whether the witnesses had been with defendant on day of the murder, were a proper attempt to establish the limitations of the character testimony. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

— Harmless or reversible error, examination of witnesses.

Refusal, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to permit cross-examination of accomplice, who testified for government and whose counsel had been informed that government would be willing, with regard to unrelated narcotics and robbery charges against accomplice, to accept plea of guilty to one misdemeanor, as to whether government had made any disposition of such unrelated charges was reversible error when considered in conjunction with other errors. D.C. Code §§ 22-1801(b), 22-2401, 22-2901, 22-3202. *United States v. Leonard*, 494 F.2d 955, 1974 U.S. App. LEXIS 10300 (C.A.D.C. 1974).

In prosecution for armed robbery and assault with a dangerous weapon, trial court committed prejudicial error in ruling that a prospective defense character witness whose testimony was to be limited to defendant's reputation for truth and veracity could be cross-examined about an alleged arrest of defendant for rape; in addition to introducing the reprobated "bad man—good man" dichotomy into the trial, the relationship between rape and veracity is tenuous at best, and any possible probative value of the evidence would have been far outweighed by its prejudicial effect. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Fox*, 473 F.2d 131, 1972 U.S. App. LEXIS 6730 (C.A.D.C. 1972).

Prosecutor's question to detective as to date of photograph of defendant that detective had volunteered was a police identification photograph, to which detective responded that photograph was from a date prior to charged offenses, was not prosecutive error in murder and armed robbery prosecution; it was not apparent that prosecutor acted with intent to prejudice defendant by showing that police secured photograph before his arrest in present case, and question helped show that defendant's hairstyle near time of offenses matched witnesses' descriptions of one assailant. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Prosecutor's repeated use of leading questions did not require reversal of murder and armed robbery convictions, where almost all of

defendant's objections to the leading nature of the questions were sustained. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Error arising when prosecutor was permitted to impeach its own witnesses with prior inconsistent statements in prosecution for first-degree murder while armed was harmless, where testimony of other prosecution witnesses, if believed, established that defendant was armed and shot victim. D.C. Code 1981, §§ 6-2361, 14-102, 22-2401, 22-3202, 22-3204. *In re D.A.*, 597 A.2d 1331, 1991 D.C. App. LEXIS 291 (1991).

In prosecution for manslaughter while armed in which defendant claimed self-defense, it was harmless error to refuse to permit proffered impeachment and extrinsic evidence of government witness' prior inconsistent statement of victim's purpose in entering apartment in which he was killed; any impeachment discrediting witness' "benign visitor" testimony, while reinforcing defendant's statements, was only marginally relevant to right of self-defense later, when defendant choked victim over substantial period of time, during which period defendant was clearly in control of situation and appeared not to be in imminent danger. D.C. Code 1981, §§ 22-2405, 22-3202. *Gray v. United States*, 589 A.2d 912, 1991 D.C. App. LEXIS 80 (1991).

Error, as result of prosecutor's open-ended question leading detective to violate court order not to mention photographic identification made by witnesses who had not given identification testimony, did not prejudice defendant in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license, where detective did not testify that witness had made identification, and defense did not rest on claim of misidentification. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's improper use of eight leading questions which were put to robbery victims who could not recall events, which asked whether property was taken from victims and whether victims remembered identifying defendant to police, which put before jury a fact not otherwise known, which was directly relevant to main issue in case, but which asked for cumulative evidence and were not answered, did not substantially prejudice defendant in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Trial court's action in murder and kidnapping prosecution in allowing prosecutor to establish through cross-examination that one defendant had not told anyone except her mother about her encounter with murder victim on day of his death did not cause serious prejudice to defendant, since such impeachment did not encroach upon defendant's constitutional right against self-incrimination, since prosecutor made no mention of it in closing, and in light of strong evidence in the case. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

Error of trial court, in prosecution for felony-murder and first-degree burglary, in admitting previous statements of three prosecution witnesses to rehabilitate their testimony after defense counsel suggested that the witnesses had a motive to lie at trial was harmless, in view of government's evidence of defendant's active participation in the crimes, in conjunction with court's detailed charge to jury regarding limited use of prior consistent statements. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

In prosecution wherein defendants were convicted of armed kidnapping and armed robbery, where defense counsel was denied any opportunity to cross-examine as to possible liberty interest bias after making adequate proffer and where witness involved was key government witness and where chance of testimonial motivation of witness was not otherwise made known to jury, so that jury had no opportunity to assess potential bias of witness, error in refusing to allow cross-examination of prosecuting witness against whom an unrelated drug charge was pending could not be said to be harmless. D.C. Code 1973, §§ 22-2101, 22-2901, 22-3202; U.S. Const. Amend. 6. *Coligan v. United States*, 434 A.2d 483, 1981 D.C. App. LEXIS 351 (1981).

In prosecution for armed burglary, armed robbery and assault, error of a constitutional dimension occurred in restricting scope of defense cross-examination of detective and complainant concerning her possible role as an informant in other cases, which might have demonstrated her need to curry favor with authorities, presumably in exchange for their overlooking her own illegal conduct of bootlegging liquor and cigarettes, but such error was harmless, where complainant testified that she believed that police were aware of her illegal activities, complainant admitted status as law-breaker, evidence showed that complainant was victim of violent assault and record reflected that restricted cross-examination was of

relatively little importance in trial below. D.C. Code §§ 22-502, 22-1801, 22-2901, 22-3202, 25-102 et seq.; U.S. Const. Amend. 6. *Smith v. United States*, 389 A.2d 1364, 1978 D.C. App. LEXIS 543 (1978).

— **In general.**

Trial court followed the correct course of action, in prosecution for aggravated assault while armed and assault with a dangerous weapon, when it prevented a recalcitrant witness from being called to the stand in front of the jury for the sole purpose of his refusing to answer the government's questions, and in holding a contempt hearing of the witness out of the presence of the jury; though witness did not assert a Fifth Amendment privilege or any valid reason for refusing to testify, it was likely that the jury would speculate as to the possible reasons for the refusal. *Martin v. United States*, 756 A.2d 901, 2000 D.C. App. LEXIS 172 (2000).

Prosecutor's eight leading questions which were put to victims despite victims' inability to recall events of robbery were improper in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

— **Privilege of witness, examination of witnesses.**

In first-degree murder trial, trial court was not required to sua sponte inquire as to whether government could obtain order of use immunity for prosecution witness after witness invoked his Fifth Amendment privilege against testifying concerning previous altercation in which witness and victim had allegedly shot at defendant, where neither party suggested use immunity and defense counsel made rather weak showing of why cross-examination of witness about previous altercation was necessary. U.S.C. Const. Amends. 5, 6; D.C. Code 1981, §§ 22-2401, 22-3202. *McClellan v. United States*, 706 A.2d 542, 1997 D.C. App. LEXIS 136 (1997), writ of certiorari denied by 524 U.S. 910, 118 S. Ct. 2073, 141 L. Ed. 2d 149, 1998 U.S. LEXIS 3677, 66 U.S.L.W. 3773 (1998).

— **Rebuttal, examination of witnesses.**

In proceeding in which defendant was convicted of armed robbery and in which he testified that he did not frequent the area in question and could not possibly be the perpetrator of the offense, allowing three officers, who were assigned to prostitution enforcement branch, to testify, in rebuttal, that they had seen defendant in such area on at least 13 occasions was not abuse of discretion, particularly in light of strength of Government's case and the fact that

testimony concerning prostitution had already been admitted at trial. D.C. Code §§ 22-2901, 22-3202. *Fitzhugh v. United States*, 415 A.2d 548, 1980 D.C. App. LEXIS 304 (1980).

Harmless or reversible error.

— **Arguments and conduct of counsel, harmless or reversible error.**

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. D.C. Code §§ 22-105, 22-501, 22-502, 22-2401, 22-2403, 22-3202. *United States v. Hawkins*, 480 F.2d 1151, 1973 U.S. App. LEXIS 9498 (C.A.D.C. 1973).

Allegedly improper argument by prosecutor of aiding and abetting theory during rebuttal, following closing arguments in which none of the defendants directly addressed such a theory, did not require reversal of murder and armed robbery convictions; argument was not a surprise because government had addressed aiding and abetting theory in opening argument, and defense made rational judgment not to address that argument when it had opportunity to do so. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Even assuming the prosecutor improperly commented during opening statement that the testimony by two defendants could be used as evidence against all four defendants, in joint trial for voluntary manslaughter, defendant did not suffer substantial prejudice, so as to warrant reversal, where during jury selection the court explained that evidence against one defendant could not be used against another, the court explained in its preliminary instructions that opening statements were not evidence, the trial judge offered three separate curative instructions, and the evidence against the defendant was very strong. D.C. Code 1981, §§ 22-2405, 22-3202. *Plater v. United States*, 745 A.2d 953, 2000 D.C. App. LEXIS 38 (2000).

Defendant was not substantially prejudiced, in prosecution for assault, by prosecutor's reference in rebuttal to victim's medical records and gesture by prosecutor in pointing his hand and finger at victim as if he had a gun; prosecutor was explaining intent element of assault with intent to kill while armed. D.C. Code 1981, §§ 22-501, 22-3202. *Freeman v. United States*, 689 A.2d 575, 1997 D.C. App. LEXIS 21 (1997).

Trial court's "on the spot" determination that prosecutor sought to draw legitimate inference from evidence when he argued that when child

was brought into bedroom and killed with hammer before second child was brought into same room and killed was not reversible error; although prosecutorial speculation would have been impermissible even if it had been defended as "reasonable inference," there was ample evidence of premeditation and deliberation, so that it was unlikely that speculation influenced jury. D.C. Code 1981, §§ 22-2401, 22-3202. *Mills v. United States*, 599 A.2d 775, 1991 D.C. App. LEXIS 216 (1991).

Error, if any, arising from codefendant's closing argument that he was not guilty and was caught in defendant's robbery, was harmless in view of overwhelming evidence of guilt. D.C. Code 1981, §§ 22-2901, 22-3202. *Hordge v. United States*, 545 A.2d 1249, 1988 D.C. App. LEXIS 125 (1988).

Prosecutor's improper, incomplete missing witness argument which claimed that only defendant's sister and girl friend supported alibi defense of being at party with several other potential witnesses, which trial court ordered prosecutor to abandon, and which was made in context of strong evidence against defendant did not substantially sway jury and did not prejudice defendant in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Remarks made by prosecutor in closing argument in murder and kidnapping prosecution, reminding jurors of their obligation to avoid deciding the case on the basis of sympathy, and stating that defendant was not on trial for what she did all her life, but rather what she did on the day of the murder, were not so prejudicial as to jeopardize fairness of the trial. D.C. Code 1981, §§ 22-2101, 22-2401, 22-3202. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

Even if prosecutor's statement that there was no death penalty in the city anymore, made during closing argument in prosecution for felony-murder and first-degree burglary, was improper, any error was harmless, in view of government's strong case against defendants coupled with court's instructions that the jury disregard the comment and fact that jurors eventually were instructed by the court, at defense's request, on penalties for various offenses, including first-degree murder. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

Although cumulative impact of prosecutor's continual references to murder defendant's fail-

ure to testify was sufficiently prejudicial as to have denied him a fair trial, this misconduct contaminated only the jury's deliberations and the finding of malice requisite for the verdict of murder in the second degree; accordingly, case had to be remanded with instructions either to permit Government to elect to retry defendant on charge of second-degree murder or to enter a judgment on the charge of manslaughter with appropriate resentencing to follow. D.C. Code 1981, §§ 22-2403, 22-3202; U.S. Const. Amend. 6. *Bowler v. United States*, 480 A.2d 678, 1984 D.C. App. LEXIS 571 (1984).

While prosecutor's statements, indirectly alluding to the fact that defendant did not testify, did not alone require reversal, this error was but one in a myriad of errors which so prejudiced the jury as to deny defendant a fair trial on charge of second-degree murder. D.C. Code 1981, §§ 22-2403, 22-3202. *Bowler v. United States*, 480 A.2d 678, 1984 D.C. App. LEXIS 571 (1984).

Error in suggesting in closing argument that particular pistol which caused victim's death belonged to defendant solely because he had owned other guns was not prejudicial where standard instruction that case was to be decided on the evidence and not on counsel argument was given and defendant, tried for second-degree murder, was convicted of involuntary manslaughter. D.C. Code 1981, §§ 11-707(a), 22-2403, 22-3202. *Fornah v. United States*, 460 A.2d 556, 1983 D.C. App. LEXIS 353 (1983).

Where there was no evidence adduced at trial to support prosecutor's contentions of perjury or lying under oath and evidence of guilt of armed robbery, as reflected in record, was not overwhelming and could have led to verdict for either party, and where defense counsel did not request specific remedial instructions and none were given, prosecutor's remarks were prejudicial and defendant was entitled to new trial. D.C. Code 1973, §§ 22-2901, 22-3202. *Miller v. United States*, 444 A.2d 13, 1982 D.C. App. LEXIS 312 (1982).

— In general.

In prosecution for assault with intent to kill while armed and carrying dangerous weapon, in view of overwhelming direct evidence timely placing defendant at scene of crime and equivocal and unsupported nature of his own testimony concerning his whereabouts at time of offense, any emphasis by court or his counsel upon his more general defenses and any other claimed error were harmless beyond reasonable doubt. 18 U.S.C. § 294(d); D.C. Code §§ 22-501, 22-3202, 22-3204. *United States v. Craven*, 458 F.2d 802, 1972 U.S. App. LEXIS 10987 (C.A.D.C. 1972).

Trial court's response to jury's note inquiring as to the meaning of "readily available," that

jury should give the term its “ordinary meaning_____ in everyday conversation,” improperly permitted jury to find that defendant committed charged drug offense “while armed” merely because a pistol was within his reach, even if he was unaware of the weapon’s presence or lacked the intent to exercise dominion or control over it and thus did not constructively possess it. *Cox v. United States*, 999 A.2d 63, 2010 D.C. App. LEXIS 397 (2010).

Jury’s inconsistent verdict of acquitting defendant of possession of a prohibited dangerous weapon charge while convicting defendant of aggravated assault while armed charge did not warrant reversal, since sufficient evidence was presented at trial for a reasonable jury to find defendant guilty of aggravated assault while armed. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

Government’s failure to provide complaint submitted to Civilian Complaint Review Board (CCRB), in which complainant alleged he was mistreated by police officers who arrested defendant, would not require reversal of convictions for drug trafficking and weapons offenses, even assuming complaint was Brady material; presentation of the material to impeach officers’ testimony would not have made a different result reasonably probable, where the evidence against defendant was overwhelming and none of the officers who testified were implicated in the complaint. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

Defendant was not prejudiced in presenting his theory of self-defense that homicide victim was first aggressor based on trial court’s decision precluding defendant from presenting additional evidence of violent character of assault victim who was also present in room when defendant and friend attempted to sell victims soap rather than cocaine; there could be no legal imputation of assault victim’s intent to homicide victim because, although victims may have been cohorts, they were victims, not parties charged as aiders and abettors. D.C. Code 1981, §§ 22-502, 22-2405, 22-3202. *Edwards v. United States*, 721 A.2d 938, 1998 D.C. App. LEXIS 223 (1998).

— Remarks of judge, harmless or reversible error.

Trial court’s impermissibly broad definition of “serious bodily injury” element of aggravated assault while armed (AAWA), which occurred when court defined term as an injury that “causes serious impairment of physical condition,” did not rise to level of constitutional error to be tested under Chapman harmless error standard, where trial court instructed the jury on each element of the offense and provided

guidance, albeit partially erroneous, on the meaning of “serious bodily injury.” *Jenkins v. United States*, 877 A.2d 1062, 2005 D.C. App. LEXIS 338 (2005).

Trial court’s impermissibly broad definition of “serious bodily injury” element of aggravated assault while armed (AAWA), which occurred when court defined term as an injury that “causes serious impairment of physical condition,” was likely to have had a substantial influence on verdict, and thus constituted reversible error; while the evidence was sufficient to permit a properly instructed jury to convict defendant, the evidence was not overwhelming or particularly strong as to any of the proper components of definition of “serious bodily injury.” *Jenkins v. United States*, 877 A.2d 1062, 2005 D.C. App. LEXIS 338 (2005).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, trial judge’s alleged facial expressions and other outward manifestations of disbelief of a defense witness was not shown to have prejudiced accused, in view of assertion that judge turned away so as to avoid revealing his facial reaction to witness’ testimony. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

Indictment or information.

— Amendment, indictment or information.

Jury instruction did not constructively amend indictment with respect to armed rape charge, even though indictment charged rape “while armed with a stick and a firearm” and judge instructed jury that defendants could be “armed with” weapons or have had them “readily available”; court properly instructed jury that they were not required to find that defendants were actually armed with stick or firearm while rape was in progress, but that it would be sufficient if they found stick or firearm readily available to defendants at time of rape. (Per Reid, J., with two Judges concurring.) D.C. Code 1981, § 22-3202; § 22-2801 (repealed). *Bolanos v. United States*, 718 A.2d 532, 1998 D.C. App. LEXIS 186 (1998).

Trial court did not abuse its discretion by permitting government to change indictment before trial without resubmitting its evidence to grand jury, so as to substitute lesser included offense of assault with dangerous weapon for armed robbery and assault with intent to commit armed robbery, as indictment was narrowed, rather than broadened, where, from time they were indicted, defendants were on notice that they needed to defend against all lesser included offenses of armed robbery and

of assault with intent to commit robbery. D.C. Code 1981, §§ 22-501, 22-2901, 22-3202; U.S. Const. Amend. 5. *Williams v. United States*, 641 A.2d 479, 1994 D.C. App. LEXIS 68 (1994).

— Armed offenses, indictment or information.

Charge in indictment that offense was committed "with force and arms" was insufficient to charge that defendant had been "armed with pistol or other firearm", to bring him within purview of statute imposing additional penalty for aggravated offense. D.C. Code 1951, §§ 22-501, 22-3202. *Jordan v. U.S. District Court for District of Columbia*, 233 F.2d 362, 1956 U.S. App. LEXIS 3159 (C.A.D.C. 1956).

Under statute imposing additional penalty upon one who commits crime of violence when armed with firearm, facts in aggravation must be charged in indictment and found to be true by jury before additional penalty may be imposed. D.C. Code 1951, § 22-3202. *Jordan v. U.S. District Court for District of Columbia*, 233 F.2d 362, 1956 U.S. App. LEXIS 3159 (C.A.D.C. 1956).

Allegation in indictment that defendant possessed cocaine "while armed," and not that firearm was "readily available," did not preclude finding that defendant was subject to discretionary maximum sentence, rather than mandatory minimum sentence, based upon evidence that defendant kept gun on vehicle's floor next to drugs he used to resupply his seller. D.C. Code 1981, § 22-3202(a)(1). *Johnson v. United States*, 686 A.2d 200, 1996 D.C. App. LEXIS 260 (1996).

— Dangerous or deadly weapon, indictment or information.

Under statute providing punishment of one who commits crime of violence while armed with or having readily available any pistol or firearm (or imitation thereof) or other dangerous or deadly weapon, critical added element is that crime is committed by one armed with dangerous or deadly weapon, and list of weapons merely catalogues ways in which offense may be committed; such specific facts need not be included in indictment, and when they are included, they are surplusage. D.C. Code § 22-3202. *Meredith v. United States*, 343 A.2d 317, 1975 D.C. App. LEXIS 225 (1975).

— Different offense included in offense charged, indictment or information.

Assault with a dangerous weapon was lesser included offense of armed robbery. D.C. Code §§ 22-2901, 22-3202. *United States v. Diggs*, 522 F.2d 1310, 1975 U.S. App. LEXIS 12115 (C.A.D.C. 1975).

An assault with a dangerous weapon on the victim of an armed robbery is lesser offense included within robbery offense and does not support a separate conviction. D.C. Code §§ 22-

502, 22-2901, 22-3202(a). *United States v. Jackson*, 509 F.2d 499, 1974 U.S. App. LEXIS 5687 (C.A.D.C. 1974).

Assaults of bank tellers with dangerous weapons were lesser included offenses of armed robberies of tellers and defendants could not be convicted of both the robberies and the assaults. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Cooper*, 504 F.2d 260, 1974 U.S. App. LEXIS 6885 (C.A.D.C. 1974).

Whether unlawful entry is lesser included offense with respect to any particular crime that is charged depends not solely upon comparison of statutory requirements for respective crimes but also upon analysis of facts of offense as charged in each indictment and as proved at trial. D.C. Code §§ 22-502, 22-1801(a, b), 22-2901, 22-3101, 22-3202. *United States v. Kearney*, 498 F.2d 61, 1974 U.S. App. LEXIS 8584 (C.A.D.C. 1974).

Under District of Columbia statute assault with a dangerous weapon is a lesser included offense of robbery while armed. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Johnson*, 475 F.2d 1297, 1973 U.S. App. LEXIS 11465 (C.A.D.C. 1973).

Assault with a dangerous weapon is a lesser included offense of aggravated assault while armed. D.C. Code 1981, §§ 22-504.1, 22-3202. *Gathy v. United States*, 754 A.2d 912, 2000 D.C. App. LEXIS 128 (2000).

Voluntary manslaughter while armed was lesser included offense of second-degree murder while armed, so that defendants could be convicted of manslaughter offense after being charged only with murder offense, though at time of trial, maximum penalty for manslaughter offense exceeded maximum penalty for murder offense by \$1,000 fine; two offenses had identical elements except that murder offense also required malice, and court could avoid misapplication of statute by refraining from imposing fine. D.C. Code 1981, §§ 22-2403, 22-2404, 22-2405, 22-3202; Fed.R.Cr.Proc. Rule 31(c), 18 U.S.C.; Criminal Rule 31(c). *Lee v. United States*, 668 A.2d 822, 1995 D.C. App. LEXIS 252 (1995).

Assault with dangerous weapon was lesser included offense of mayhem while armed, arising out of incident in which defendant, while fighting with victim and with general intent to injure, struck victim with pencil, lodging pencil in victim's right eye; there was evidence that defendant acted in self-defense and did not realize pencil was in his hand when he struck victim. D.C. Code 1981, §§ 22-502, 22-506, 22-3202, 22-3202(a). *Wynn v. United States*, 538 A.2d 1139, 1988 D.C. App. LEXIS 51 (1988).

Second-degree murder while armed and attempted robbery while armed were lesser included offenses of felony-murder, requiring vacation of either the felony-murder conviction or the convictions for the lesser offenses. U.S.

Const.Amend. 5; D.C. Code 1981, §§ 22-2401, 22-2403, 22-2902, 22-3202, 22-3204. *Price v. United States*, 531 A.2d 984, 1987 D.C. App. LEXIS 448 (1987).

Assault with a deadly weapon is not necessarily included within robbery; presumably, however, assault with a deadly weapon may be included within armed robbery. D.C. Code §§ 22-2901, 22-3202. *Day v. United States*, 390 A.2d 957, 1978 D.C. App. LEXIS 485 (1978).

Where defendant was charged with entry into the dwelling of another person, with armed robbery of that person, assault with intent to commit robbery while armed as to the person's companion, and with assault with a dangerous weapon against each of two eyewitnesses to the crime, none of the crimes was a lesser included offense. D.C. Code §§ 22-501, 22-1801(a), 22-2901, 22-3202. *Brown v. United States*, 388 A.2d 451, 1978 D.C. App. LEXIS 527 (1978).

Armed robbery can be committed without also violating statute prohibiting possession of certain weapons; thus, possession of prohibited weapon is not lesser included offense of crime of armed robbery. D.C. Code §§ 22-2901, 22-3202, 22-3202(a), 22-3214(b). *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Counts of assault with a dangerous weapon were lesser included offenses of offenses of assault with attempt to commit robbery and armed robbery and, therefore, defendant could not be convicted of the former offenses in addition to the latter. D.C. Code §§ 22-501, 22-502, 22-3202. *Quick v. United States*, 316 A.2d 875, 1974 D.C. App. LEXIS 386 (1974).

Crime of assault with a dangerous weapon is a lesser included offense within the crime of armed robbery and where defendant was sentenced upon conviction of both crimes, sentence on crime of assault with a dangerous weapon was vacated. D.C. Code §§ 22-502, 22-2901, 22-3202. *Skinner v. United States*, 310 A.2d 231, 1973 D.C. App. LEXIS 372 (1973).

— Harmless or reversible error, indictment or information.

Indictment's allegedly erroneous reference to statutes relating to use of a weapon did not warrant reversal of defendant's conviction for assaulting police officers, absent prejudice to defendant, but case would be remanded for resentencing. D.C. Code 1981, §§ 22-505(a, b), 22-3202(a)(1). *United States v. Bowie*, 198 F.3d 905, 1999 U.S. App. LEXIS 33134 (C.A.D.C. 1999).

Refusal to amend robbery count at beginning of trial to include allegation of specific intent to steal was not prejudicial where clear, detailed, and thorough instructions were given; however, it is urged that indictment forms be updated and refined. D.C. Code § 22-3202. *United*

States v. Robinson, 475 F.2d 376, 1973 U.S. App. LEXIS 11290 (C.A.D.C. 1973).

In view of clear evidence that defendant aided and abetted his confederate who was armed with a gun, any error concerned with alleged prolixity of indictment which charged both armed robbery and robbery, or any other claim of defect in presentation of two theories of robbery to jury, was harmless. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Porcha*, 450 F.2d 697, 1971 U.S. App. LEXIS 8068 (C.A.D.C. 1971).

Error in aiding and abetting instruction regarding first-degree murder while armed and possession of a firearm during a crime of violence (PFCV), in that instruction amounted to a negligence instruction because error allowed jury to find defendant guilty of murder and PFCV as the natural and probable consequences of another's actions, was harmless beyond a reasonable doubt, in trial of defendant for conspiracy to commit first-degree murder, first-degree murder while armed and PFCV; court provided a valid Pinkerton co-conspirator instruction in addition to the erroneous aiding and abetting instruction, jury convicted defendant of conspiracy to commit first-degree murder and thus every juror found the requisite intent for first-degree murder, such findings sufficed for Pinkerton co-conspirator liability, and murder of victim by an armed killer was a reasonably foreseeable consequence of that conspiracy. *Wheeler v. United States*, 977 A.2d 973, 2009 D.C. App. LEXIS 343 (2009), amended by 987 A.2d 431, 2010 D.C. App. LEXIS 211 (D.C. 2010), writ of certiorari denied by 131 S. Ct. 325, 178 L. Ed. 2d 211, 2010 U.S. LEXIS 7488, 79 U.S.L.W. 3204 (U.S. 2010).

Conviction of assault to kill while armed, an offense not charged in indictment, did not constitute plain error; defendant was indicted for second-degree murder while armed and requested a lesser included offense instruction of simple assault, defendant's counsel accepted trial court's proposal to instruct on assault to kill while armed as tactical decision, and defendant had ample notice that he had to defend against evidence of malice aforethought. D.C. Code 1981, §§ 22-501, 22-2403, 22-3202. *Jackson v. United States*, 650 A.2d 659, 1994 D.C. App. LEXIS 218 (1994).

— In general.

Defendant charged with drug trafficking and weapons offenses was not entitled to missing witness instruction regarding individual who filed complaint with Civilian Complaint Review Board (CCRB) for arresting police officers' conduct, as defendant failed to establish the peculiar availability of the witness to the government, where government attempted, unsuccessfully, to subpoena witness for trial, and defendant's counsel was given witness's

name and address, and when he attempted to contact witness, defendant's brother answered the door of witness's apartment. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

The appellate court was not required to decide whether statute creating mandatory-minimum sentence for defendants convicted of crimes of violence while armed with pistol or firearm created new and thus separately indictable offense; indictments had charged defendants in the conjunctive with robbery when armed with and having readily available pistol, and defendants had been properly convicted of being accomplices to robberies in which principals had been armed with pistol. D.C. Code 1981, § 22-3202(a)(1). *Abrams v. United States*, 531 A.2d 964, 1987 D.C. App. LEXIS 446 (1987).

Defendant convicted of armed robbery was not improperly denied certain procedural rights guaranteed by statute before sentence may be enhanced on ground that trial court enhanced minimum term of his sentence due to prior robbery conviction, in that trial court did not state that minimum sentence was predicated upon defendant's prior robbery conviction, information citing to robbery committed in Maryland was on its face a nullity because enhancement statute expressly provides that prior crime must have been committed in District of Columbia, and minimum sentence was exactly one third of maximum sentence. D.C. Code 1981, §§ 22-3202(a)(2), 23-111(b), 24-203(a). *Brown v. United States*, 474 A.2d 161, 1984 D.C. App. LEXIS 371 (1984).

Because the Law Enforcement Emergency Amendment Act of 1989, which temporarily amended this section, expired prior to completion of prosecution of defendant, without any competent authority to sustain the substantive provisions or preserve ongoing prosecutions, prosecution of defendant, on challenged counts of the indictment, was abated. *United States v. Alston*, 118 WLR 819 (Super. Ct. 1990).

— Issues, proof, and variance, indictment or information.

Under an indictment for robbery, Government must prove assault and larceny. D.C. Code §§ 22-2901, 22-3201, 22-3202. *United States v. McGill*, 487 F.2d 1208, 1973 U.S. App. LEXIS 7109 (C.A.D.C. 1973).

There was no fatal variance between count which charged that defendant took money from the "immediate actual possession" of post office custodian and proof that money he took was taken from postal employees, where evidence showed that custodian had control and custody of money taken, that defendant took money

from an area within which the custodian reasonably could have been expected to exercise some physical control, and that defendant did so by force directed at the custodian personally. D.C. Code §§ 22-2901, 22-3202. *United States v. Spears*, 449 F.2d 946, 1971 U.S. App. LEXIS 11849 (C.A.D.C. 1971).

Proof of ownership of the stolen property was not required to sustain convictions of armed robbery. D.C. Code §§ 22-2901, 22-3202. *Jones v. United States*, 362 A.2d 718, 1976 D.C. App. LEXIS 349 (1976).

— Joinder, indictment or information.

Where assault with intent to rape committed against two women and purse snatching committed against third woman occurred within short time of each other and in approximately the same location but were not otherwise related, the mere temporal and spacial proximity could not justify characterization of the assault and robbery as different parts of the same series of acts or transactions and joinder of the robbery count with the other charges was improper and conferred upon the district court no jurisdiction over the alleged D.C. Code offense of robbery. 26 U.S.C. (I.R.C.1954) § 5861(d, i); D.C. Code §§ 22-501, 22-502, 22-2901, 22-3202; Fed.Rules Crim.Proc. rules 8, 8(b), 14, 18 U.S.C.; 18 U.S.C. § 5010(b). *United States v. Jackson*, 562 F.2d 789, 1977 U.S. App. LEXIS 12056 (C.A.D.C. 1977).

The Government may properly charge in the same indictment offenses against both the federal bank (savings and loan) robbery statute and the District of Columbia armed robbery statute, provided defendant is not ultimately sentenced under two statutes proscribing essentially the same offense. 18 U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

In a robbery case the government has right to charge, as separate assaults, assaults against bystanders who are not robbed. D.C. Code §§ 22-3201, 22-3202. *Sutton v. United States*, 434 F.2d 462, 1970 U.S. App. LEXIS 7650 (C.A.D.C. 1970), writ of certiorari denied by 402 U.S. 988, 91 S. Ct. 1676, 29 L. Ed. 2d 153, 1971 U.S. LEXIS 2094 (1971).

Murder and weapons charges against one defendant could be joined with obstruction of justice charges against second defendant, in multi-defendant prosecution arising from stabbing death of victim, where defendants both participated in attack on victim and second defendant's attempt to keep his girlfriend from talking to police, which was basis for obstruction of justice charges, was logically related to attack. D.C. Code 1981, §§ 22-722(a)(3), 22-2401, 22-3202, 22-3204(b); Criminal Rule 8(b). *Sams v. United States*, 721 A.2d 945, 1998 D.C. App. LEXIS 229 (1998), writ of certiorari de-

nied by 528 U.S. 1135, 120 S. Ct. 977, 145 L. Ed. 2d 928, 2000 U.S. LEXIS 832, 68 U.S.L.W. 3479 (2000), writ of certiorari denied by 531 U.S. 1015, 121 S. Ct. 575, 148 L. Ed. 2d 492, 2000 U.S. LEXIS 7864, 69 U.S.L.W. 3363 (2000).

Offenses of robbery, armed robbery, and unauthorized use of motor vehicle could be joined for trial on basis that they were "connected together" in light of evidence that proceeds of robbery were found in trunk of vehicle stolen several days earlier. Criminal Rule 8(a); D.C. Code 1981, §§ 22-2901, 22-3202, 22-3815. *Gooch v. United States*, 609 A.2d 259, 1992 D.C. App. LEXIS 128 (1992).

Offenses of unauthorized use of a motor vehicle, robbery, and armed robbery were of same or similar character and thus could be joined for trial; crimes were against owner's right of possession, and additional elements distinguishing robbery offenses from unauthorized use of motor vehicle did not undercut degree of similarity. Criminal Rule 8(a); D.C. Code 1981, §§ 22-2901, 22-3202, 22-3815. *Gooch v. United States*, 609 A.2d 259, 1992 D.C. App. LEXIS 128 (1992).

Where rape and robbery victims were prostitutes who were abducted or induced into getting into defendant's car in very early hours of morning, and each victim described the car, in varying degrees of particularity consistent with defendant's as a dark blue 1970 Thunderbird, and where circumstances of crime were similar but each crime was separate and distinct, joinder of counts against defendant did not work any prejudice. D.C. Code §§ 22-501, 22-2401, 22-2801, 22-2901, 22-3202, 22-3502. *Bowyer v. United States*, 422 A.2d 973, 1980 D.C. App. LEXIS 385 (1980).

Where each of two robberies was committed with sawed-off rifle, each involved as victim a delivery truck driver who collected money after each delivery, each driver forced into truck and driven or made to drive to another location while the money was taken from him, the two offenses occurred within five days of each other and, when defendant was removed from police car after arrest, a revolver was found beside seat on side where he had been sitting, joinder of the two robbery charges and charge of carrying dangerous weapon was proper. 18 U.S.C. § 5010(c); D.C. Code §§ 22-502, 22-2901 to 22-3202. *Goins v. United States*, 353 A.2d 298, 1976 D.C. App. LEXIS 490 (1976).

— Juvenile adjudications, indictment or information.

Delinquency adjudications of juvenile defendant for assault and assault with intent to commit robbery, stemming from his participation in gang attack upon pedestrian who was knocked unconscious and whose pockets were searched as he lay unconscious, were both based solely on first count of two-count petition

that charged him, first, with armed robbery and second, with armed assault with intent to kill; second charge could only have referred to shooting of victim by another gang member that occurred a brief but appreciable time after group attack, and given lack of evidence that defendant was involved in that shooting at all, and failure of trial court to mention shooting in its findings of fact, adjudication of delinquency against defendant was not based on that incident. D.C. Code 1981, §§ 22-501, 22-504, 22-2901, 22-3202. In re T.H.B., 670 A.2d 895, 1996 D.C. App. LEXIS 6 (1996).

— Lesser included offenses, indictment or information.

Second-degree burglary was lesser included offense of second-degree burglary while armed with Molotov cocktail. D.C. Code §§ 22-1801(b), 22-3202. *United States v. Carter*, 522 F.2d 666, 1975 U.S. App. LEXIS 13956 (C.A.D.C. 1975).

Assault with a dangerous weapon is a lesser included offense of assault with intent to commit robbery while armed, and thus defendant could not be convicted of the lesser as well as the greater offense. U.S. Const. Amend. 6; D.C. Code §§ 22-501, 22-502, 22-3202. *United States v. Alston*, 483 F.2d 1264, 1973 U.S. App. LEXIS 8807 (C.A.D.C. 1973).

Manslaughter is lesser included offense of second-degree murder. D.C. Code 1981, §§ 22-2403, 22-3202. *Price v. United States*, 602 A.2d 641, 1992 D.C. App. LEXIS 22 (1992).

Robbery is a lesser included offense of armed robbery. D.C. Code 1981, §§ 22-2901, 22-3202. *Anderson v. United States*, 490 A.2d 1127, 1985 D.C. App. LEXIS 362 (1985).

— Robbery offenses, indictment or information.

The government may decline to charge armed robbery under statute authorizing an indeterminate sentence up to life for crimes of violence when committed with a dangerous weapon and may instead rely on prior formulation of robbery and assault with a dangerous weapon. D.C. Code § 22-3202. *Sutton v. United States*, 434 F.2d 462, 1970 U.S. App. LEXIS 7650 (C.A.D.C. 1970), writ of certiorari denied by 402 U.S. 988, 91 S. Ct. 1676, 29 L. Ed. 2d 153, 1971 U.S. LEXIS 2094 (1971).

Government has the right, in robbery prosecution, to charge lesser included or alternative offenses to armed robbery in order to allow for contingencies in proof. D.C. Code §§ 22-3201, 22-3202. *Sutton v. United States*, 434 F.2d 462, 1970 U.S. App. LEXIS 7650 (C.A.D.C. 1970), writ of certiorari denied by 402 U.S. 988, 91 S. Ct. 1676, 29 L. Ed. 2d 153, 1971 U.S. LEXIS 2094 (1971).

Indictment provided fair notice of charge of conspiracy to commit armed robbery, though it

did not refer to statute defining conspiracy to commit crimes, where indictment alleged that defendant and two accomplices knowingly conspired and agreed to commit together criminal offenses, that object of conspiracy was to rob victim while armed, and that named conspirators committed overt acts including arming themselves, searching out intended victim, breaking into victim's apartment, and forcing victim to ride with them to his apartment for purpose of committing armed robbery. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Armed robbery indictment sufficiently set forth all elements of the offense, although statutory language regarding "force or violence" or "putting in fear" was not employed, where indictment stated that taking was done by defendant, and another, while armed with a dangerous weapon, alleged property was taken from the person and from immediate actual possession of the victim, the words "armed robbery" appeared twice in the indictment in the caption and parenthetical reference, and caption and parenthetical also informed defendant that he was charged with violating robbery statute. D.C. Code 1981, §§ 22-2901, 22-3202; Criminal Rules 7(c), 34. *United States v. Bradford*, 482 A.2d 430, 1984 D.C. App. LEXIS 505 (1984).

Where indictment charged defendant with robbery while armed with a dangerous weapon, and proof adduced at trial showed that he was so armed, court's instruction that defendant could be convicted if jury found that he was armed with any pistol or firearm or imitation thereof was not objectionable as amending indictment but merely explained charges contained therein more fully than did indictment itself and, absent any claim of prejudice by claimed variance, instruction was not erroneous. D.C. Code §§ 22-2901, 22-3202; D.C. Code SCR, Criminal Rule 7(c). *Meredith v. United States*, 343 A.2d 317, 1975 D.C. App. LEXIS 225 (1975).

Instructions.

— Assault offenses, instructions.

Trial court's aiding and abetting instruction was erroneous as to aiding and abetting the element of "possession" with respect to the crime of possession of a firearm during a crime of violence, and because carrying pistol without license also was a possessory offense, the jury had to find that the accomplice had the intent to assist the principal carry the unlicensed weapon, and these errors were "clear" for purposes of plain error review, but defendant's substantial rights were not affected by the erroneous aiding and abetting instruction; throughout trial, the prosecutor's theory was

that defendant, not his companion, shot victim, and aiding and abetting theory was offered as fall-back to the government's principal argument that it was defendant who shot victim. *Spencer v. United States*, 991 A.2d 1185, 2010 D.C. App. LEXIS 146 (2010).

Requested instruction on circumstances in which initial aggressor may recover the right of self-defense was warranted in prosecution for aggravated assault while armed in which defendant claimed that he was an innocent victim of alleged victim's schizophrenic paranoia and drug-induced rage, where alleged victim testified that defendant came to collect a drug debt, and defendant testified that he "backed up" when alleged victim pulled a knife on him. *Murphy-Bey v. United States*, 982 A.2d 682, 2009 D.C. App. LEXIS 506 (2009).

Any error in trial court's omission of instructions for jury to not treat instruction on assault on a police officer (APO) any differently than other instructions, in context of trial court's realization that it had erroneously instructed jury on APO while armed rather than on charged offense of APO with a dangerous weapon and its subsequent instruction on APO as lesser-included offense of APO with a dangerous weapon and withdrawal from jury's consideration charge of APO with a dangerous weapon and related charge of possession of a firearm during a crime of violence (PFCV), was not plain error; reinstructions, considered as a whole, fairly and accurately stated applicable law. *Blocker v. United States*, 940 A.2d 1042, 2008 D.C. App. LEXIS 11 (2008).

Trial court acted within its discretion when, during jury deliberations and after realizing that it had erroneously instructed jury on assault on a police officer (APO) while armed rather than on charged offense of APO with a dangerous weapon, it instructed jury on APO as lesser-included offense of APO with a dangerous weapon and withdrew from jury's consideration charge of APO with a dangerous weapon and related charge of possession of a firearm during a crime of violence (PFCV); facts of case supported instruction on APO, erroneous instruction could not be allowed to stand uncorrected, and defendant was not prejudiced as a result of reinstructions. *Blocker v. United States*, 940 A.2d 1042, 2008 D.C. App. LEXIS 11 (2008).

Trial court had an affirmative obligation to correct its error in instructing jury on assault on a police officer (APO) while armed, rather than on offense that was charged in indictment, which was offense of APO with a dangerous weapon, even though jury, which was deliberating, had not yet expressed any confusion regarding offense charged in indictment; trial court recognized that jury, because it had received an erroneous instruction, could not have had a correct understanding of law applicable

to offense charged in indictment. *Blocker v. United States*, 940 A.2d 1042, 2008 D.C. App. LEXIS 11 (2008).

Trial court's instruction defining "serious bodily injury," an element of aggravated assault while armed (AAWA), was incorrect, where trial court failed to instruct the jury on two of the Nixon prongs, i.e., extreme pain and unconsciousness. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

Trial court's instructional error incorrectly defining "serious bodily injury," an element of aggravated assault while armed (AAWA), did not result in per se reversal; if there was sufficient evidence to convict based upon the instruction given, then, necessarily, the verdict satisfied one of the Nixon elements of serious bodily injury. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

Trial court's definition of "serious bodily injury" element of aggravated assault while armed (AAWA), in which court defined term as an injury that "causes serious impairment of physical condition," constituted an impermissible broadening of the meaning of term; definition untethered "impairment" from the specificity or concreteness that it possesses when linked to the functions of a bodily member, organ or mental faculty, and definition connoted a level of generality not conveyed by companion terms of substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement. *Jenkins v. United States*, 877 A.2d 1062, 2005 D.C. App. LEXIS 338 (2005).

Note from jury, during deliberations in prosecution for assault with intent to kill while armed (AWIK/WA) and related offenses, demonstrated specific confusion as to the law and required re-instruction from trial court; jury's note indicated its belief that defendant had subjectively perceived need to act as he did in self-defense and had never intended to harm victim, consistent with court's self-defense instruction, but further indicated that it did not believe it could accept defendant's claim of self-defense because force used by defendant was excessive. *Alcindore v. United States*, 818 A.2d 152, 2003 D.C. App. LEXIS 92 (2003).

Defendant's testimony that he participated in the crimes because he was instructed to do so at gunpoint by his cousin, and that he was afraid of his cousin because "he's shot at people," warranted instruction on the defense of duress, in prosecution for armed robbery, kidnapping while armed, assault, and burglary.

McClam v. United States, 775 A.2d 1100, 2001 D.C. App. LEXIS 138 (2001).

Trial court should have instructed the jury that "serious bodily injury," as element of aggravated assault while armed, "involved a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." D.C. Code 1981, §§ 22-504.1, 22-3202. *Gathy v. United States*, 754 A.2d 912, 2000 D.C. App. LEXIS 128 (2000).

Trial judge could properly consider comparative sizes of defendant and victim in evaluating objective circumstances for purposes of determining whether to instruct jury on self-defense in prosecution for assault with dangerous weapon. D.C. Code 1981, §§ 22-502, 22-3202. *Harper v. United States*, 608 A.2d 152, 1992 D.C. App. LEXIS 360 (1992).

Defendant charged with assaulting police officer while armed was not entitled to self-defense instructions, where no lesser-included charge of simple assault was before jury and defendant did not claim that police officers used excessive force. D.C. Code 1981, §§ 22-504, 22-505, 22-3202. *Nelson v. United States*, 580 A.2d 114, 1990 D.C. App. LEXIS 244 (1990).

Jury instructions in prosecution for assault on police officer while armed, in which jury was advised three times that government had to prove beyond reasonable doubt that defendant knew or had reason to know that men at whom he fired shots were police officers, adequately explained law to jury and adequately encompassed defense theory that defendant thought his pursuers were drug dealers; it was not necessary that instructions be modified to focus jury's attention on defendant's claim that he had not heard police officers identify themselves, that under circumstances he had no reason to believe his plain clothes pursuers were police officers, and that he therefore reasonably believed they were drug dealers. D.C. Code 1981, §§ 22-505, 22-3202. *Nelson v. United States*, 580 A.2d 114, 1990 D.C. App. LEXIS 244 (1990).

In prosecution for first-degree felony-murder, second-degree murder, armed robbery, and robbery, evidence provided no rational basis for a lesser charge of assault with a deadly weapon, or simple assault, and court was not required to put case to jury on basis that essentially indulged and even encouraged speculations as to bizarre reconstruction. D.C. Code §§ 22-2401, 22-2901, 22-3202. *Day v. United States*, 390 A.2d 957, 1978 D.C. App. LEXIS 485 (1978).

— Homicide offenses, instructions.

Where defendant was charged only with aiding and abetting, an instruction on unarmed manslaughter would have been inappropriate, since there was no evidence that principal com-

mitted crime while unarmed. D.C. Code §§ 22-2405, 22-3202. *Branch v. United States*, 382 A.2d 1033, 1978 D.C. App. LEXIS 423 (1978).

— In general.

Trial court's failure to sua sponte instruct jury as to limited purpose of other crimes evidence was not error, let alone plain error, in murder case in which Government witness testified on redirect examination about prior assault in which defendant pointed apparent murder weapon at her and pulled the trigger; evidence of assault was admitted as evidence of defendant's prior gun possession, which was proof that defendant possessed the means to commit the murder. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202. *Busey v. United States*, 747 A.2d 1153, 2000 D.C. App. LEXIS 63 (2000).

Failure to instruct jury on meaning of "readily available," for purposes of statutory provision authorizing discretionary maximum sentence for dangerous crime committed while armed with or having readily available pistol or firearm, was harmless in prosecution for drug possession, where there was compelling circumstantial evidence that defendant kept gun on floor next to drugs he used to resupply his sellers. D.C. Code 1981, § 22-3202(a)(1). *Johnson v. United States*, 686 A.2d 200, 1996 D.C. App. LEXIS 260 (1996).

No limiting instruction to jury in connection with admission of knife into evidence against defendant charged with armed rape was required, even though knife tended also to show other crimes such as possession of prohibited weapon or carrying dangerous weapon, since evidence of those other crimes was inextricably entwined with evidence necessary to prove armed rape. D.C. Code 1981, §§ 22-2801, 22-3202. *Lee v. United States*, 471 A.2d 683, 1984 D.C. App. LEXIS 301 (1984).

— Instructions after submission of cause.

Trial court did not abuse its discretion in refusing to reinstruct jury, in response to jury's question regarding finding defendant guilty of first or second degree murder while armed if jury believed defendant aided and abetted another person without knowing other person had intent to kill; trial court had already provided instructions regarding relevant terms and was concerned that jury's question was so specific that supplemental instruction would dictate outcome of case. D.C. Code 1981, §§ 22-2403, 22-3202. *Graham v. United States*, 703 A.2d 825, 1997 D.C. App. LEXIS 268 (1997).

Trial court did not abuse its discretion by denying defendant's request, made during jury deliberations and after question from jury, for instruction on lesser included assault offense; trial court did not believe such instruction was responsive to jury's question regarding finding defendant guilty of first or second degree mur-

der while armed if jury believed defendant aided and abetted another person without knowing other person had intent to kill. D.C. Code 1981, §§ 22-2403, 22-3202. *Graham v. United States*, 703 A.2d 825, 1997 D.C. App. LEXIS 268 (1997).

Where jury had commenced its deliberations in prosecution for armed robbery, assault with a dangerous weapon, receiving stolen property, and carrying a pistol without a license, when it presented to the court a question concerning the armed robbery count, the court did not abuse its discretion by giving, in the face of defendant's objection but in the absence of a request to present argument, a supplemental instruction on aiding and abetting. D.C. Code §§ 22-502, 22-2205, 22-2901, 22-3202, 22-3204. *Atkinson v. United States*, 322 A.2d 587, 1974 D.C. App. LEXIS 243 (1974).

— Necessity and sufficiency, instructions.

Explanation of penalty for offense is required only for charge of first-degree murder; in every other instance, sentencing is solely the province of the court, and not of jury. D.C. Code §§ 22-502, 22-2401, 22-2403, 22-2901, 22-3202, 22-3204. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Trial judge was not required to define term "great bodily injury," used in jury instruction defining "dangerous weapon" in prosecution for carrying a dangerous weapon (CDW), in accord with definition of element of "serious bodily injury" under aggravated assault statute; trial judge defined "dangerous weapon" in accord with instruction defining term, "great bodily injury" as used in definition did not have a "technical" meaning different from its ordinary meaning in context of factual circumstances of case, and there was no inquiry from jury requesting clarification or definition of term. *Savage-El v. United States*, 902 A.2d 120, 2006 D.C. App. LEXIS 357 (2006).

Trial judge's jury instruction, in prosecution for aggravated assault while armed and assault with a dangerous weapon, that the jury could give evidence of the court's holding recalcitrant witness in contempt such weight as it deemed fair, was inappropriate and an unnecessary accommodation of defense counsel's request to have the court take judicial notice of the contempt, in that witness's failure to testify had no probative value. *Martin v. United States*, 756 A.2d 901, 2000 D.C. App. LEXIS 172 (2000).

Trial court did not commit plain error in failing to define "readily available" for purposes of offenses of distribution of cocaine while armed and possession of cocaine while armed with intent to distribute it; defendant failed to show that omission of instruction rose to level

of miscarriage of justice. D.C. Code 1981, § 22-3202. *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

Definition of dangerous or deadly weapon must be included in jury instruction on "while armed" component of offense only when object or instrument alleged to be a weapon is not one of weapons specifically listed in statute permitting enhanced penalty if offense is committed while defendant is armed. D.C. Code 1981, § 22-3202(a). *Dade v. United States*, 663 A.2d 547, 1995 D.C. App. LEXIS 287 (1995).

Jury instruction on statutory definition of pistol was not required in trial for second-degree murder while armed and possession of firearms during crime of violence, where neither offense required proof that weapon used was pistol. D.C. Code 1981, §§ 22-2403, 22-3202, 22-3204(b). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

Question whether defendant was armed when he allegedly kidnapped victim was for jury regardless of whether defendant disputed "while armed" element of charge of kidnapping while armed; accordingly, it was within court's discretion to instruct jury on lesser included offense of kidnapping. D.C. Code 1981, §§ 22-2101, 22-3202. *Whitaker v. United States*, 616 A.2d 843, 1992 D.C. App. LEXIS 287 (1992).

In prosecution for second-degree murder, attempted robbery, assault with intent to kill while armed, carrying a pistol without a license, assault with intent to kill while armed, and obstruction of justice, court's refusal to give limiting instruction as to use jury might make of evidence of one crime in determination of the other crimes was not error given the fact that jury was instructed on need to keep overlapping evidence of each crime charged separate in its deliberations. D.C. Code 1981, §§ 22-501, 22-703, 22-2902, 22-3202, 22-3204. *Smith v. United States*, 470 A.2d 315, 1983 D.C. App. LEXIS 550 (1983), writ of certiorari denied by 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344, 1985 U.S. LEXIS 988, 53 U.S.L.W. 3598 (1985).

Where evidence introduced at trial on charges of first-degree burglary while armed, murder, and assault with intent to commit rape while armed supported a multiple-offense charge, trial court did not err in requiring jury to make a separate determination of defendant's sanity on each count for which he had been found guilty. D.C. Code §§ 22-501, 22-1801(a), 22-2403, 22-3202. *Harman v. United States*, 351 A.2d 504, 1976 D.C. App. LEXIS 468 (1976), writ of certiorari denied by 429 U.S. 841, 97 S. Ct. 116, 50 L. Ed. 2d 110, 1976 U.S. LEXIS 2668 (1976).

— Persons liable, instructions.

Defendant who twice informed codefendants of witness' whereabouts could not be convicted

of aiding and abetting witness' murder, retaliation against witness, or killing witness with intent to prevent him from testifying, given absence of evidence that he intended to bring about such results or that he knew why and what codefendants intended to do. 18 U.S.C. §§ 1512(a)(1)(A), 1513(a)(1)(B), (a)(2); D.C. Code 1981, §§ 22-240 to 22-3202. *United States v. Wilson*, 160 F.3d 732, 1998 U.S. App. LEXIS 29488 (C.A.D.C. 1998), writ of certiorari denied by 528 U.S. 828, 120 S. Ct. 81, 145 L. Ed. 2d 69, 1999 U.S. LEXIS 5162, 68 U.S.L.W. 3224 (1999).

Defendant on trial for first-degree murder by shooting victim was not entitled to a jury instruction that he had been associated with the shooting because of a long-standing rumor, even though defendant argued that the instruction set forth an affirmative defense theory independent of his theory of mistaken identity; defendant formulated a mistaken binary where he could not be guilty of the shooting as a matter of law if he was associated with the shooting because of a long-standing rumor, the presence or lack of a long-standing rumor was instead a factor for the jury to consider when assessing witness credibility, and trial court provided the jury with sufficient guidance on that point. *Williams v. United States*, 6 A.3d 843, 2010 D.C. App. LEXIS 607 (2010).

Trial court's error in failing to instruct jury on foreseeability that principal was armed, in context of aiding and abetting for purposes of offenses of distribution of cocaine while armed and possession of cocaine while armed with intent to distribute it, was not plain error, because instructions were sufficiently complete and because, in any event, evidence was sufficient to permit jury reasonably to find that both defendants were acting as principals. D.C. Code 1981, § 22-3202. *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

Evidence that defendant traveled to scene of shooting with two men and victim, was present when victim was fatally shot, and fled scene with the two men, and that defendant overheard those two men planning victim's death prior to murder was sufficient to support instruction on aiding and abetting in second-degree murder prosecution. D.C. Code 1981, §§ 22-2403, 22-3202. *Gayden v. United States*, 584 A.2d 578, 1990 D.C. App. LEXIS 325 (1990), writ of certiorari denied by 502 U.S. 843, 112 S. Ct. 137, 116 L. Ed. 2d 104, 1991 U.S. LEXIS 5565, 60 U.S.L.W. 3260 (1991).

— Robbery offenses, instructions.

In prosecution for armed robbery, defendant was not entitled to instruction on the lesser offense of robbery in light of exculpatory defense he presented and testimony of two eyewitnesses who identified defendant as the indi-

vidual they saw standing next to victim only a moment after the shooting and testimony of expert that victim was shot from 12 inches away. D.C. Code 1981, §§ 22-2901, 22-3202. *Anderson v. United States*, 490 A.2d 1127, 1985 D.C. App. LEXIS 362 (1985).

Where testimony of robbery victim that robbers were armed was unequivocal and uncontradicted, and defendant's defense did not place this fact in dispute, instruction on lesser-included offense of robbery, given to jury in prosecution for armed robbery, was improper, that is, had indictment charged only armed robbery, and had defense requested instruction on lesser-included offense of robbery, trial court would properly have refused request on ground that instruction was objectionable as based on speculation without foundation in evidence. D.C. Code §§ 22-2901, 22-3202. *Lightfoot v. United States*, 378 A.2d 670, 1977 D.C. App. LEXIS 242 (1977).

Where indictment charged defendant with both armed robbery and robbery, but it was undisputed that perpetrators of robbery of which defendant was charged were armed, trial judge erred in instructing jury on lesser-included offense of robbery; however, conviction for robbery would not be overturned for "plain error" where defendant did not object to robbery instruction before jury retired to deliberate. D.C. Code §§ 22-2901, 22-3202. *Lightfoot v. United States*, 378 A.2d 670, 1977 D.C. App. LEXIS 242 (1977).

Where instruction told jury six times that specific intent was necessary element of robbery or armed robbery, trial court defined specific intent and explained difference between specific and general intent, court subsequently made misstatement that armed robbery was crime requiring general intent, and no objection was raised, misstatement, when viewed in light of instruction as a whole, did not preclude fair deliberation by jury on elements of armed robbery charge and was not plain error. D.C. Code SCR, Criminal Rules 30, 52(b); D.C. Code §§ 22-2901, 22-3202. *Johnson v. United States*, 360 A.2d 502, 1976 D.C. App. LEXIS 319 (1976).

— Self-defense, instructions.

Defendant was not entitled to self-defense instruction as to one of two shooting victims, in homicide and assault prosecution arising from incident in which defendant shot victims upon victims' perceived discovery that defendant and friend were attempting to dupe victims by selling them soap rather than cocaine; defendant used excessive force when he fired two shots virtually straight down into victim's body, while victim's weaponless hands were visible and after defendant shot second victim in head, and defendant did not do everything in his power, consistent with his safety, to avoid dan-

ger and avoid necessity of taking a life. D.C. Code 1981, §§ 22-502, 22-2405, 22-3202. *Edwards v. United States*, 721 A.2d 938, 1998 D.C. App. LEXIS 223 (1998).

Trial court did not err in instructing jury to assess defendant's actions against second shooting victim separately from defendant's actions against first shooting victim, in considering defendant's self-defense claim in homicide and assault prosecution arising from incident in which defendant shot victims upon victims' perceived discovery that defendant and friend were attempting to dupe victims by selling them soap rather than cocaine; by time defendant shot second victim, defendant no longer could reasonably believe that defendant faced a concerted threat from second victim and first victim, whom defendant had just killed. D.C. Code 1981, §§ 22-502, 22-2405, 22-3202. *Edwards v. United States*, 721 A.2d 938, 1998 D.C. App. LEXIS 223 (1998).

Defendant charged with assault with dangerous weapon was not entitled to instruction on self-defense where defendant put herself in position that was likely to result in escalation of tensions and used deadly force against man whose empty hands were in plain view, evidence did not show that victim was first aggressor, and defendant's witness confirmed that there was no fight or circumstances in which defendant was in danger of serious bodily injury. D.C. Code 1981, §§ 22-502, 22-3202. *Harper v. United States*, 608 A.2d 152, 1992 D.C. App. LEXIS 360 (1992).

In view of fact that defendant's companion could not justifiably return the fire of a security guard who was attempting to prevent a felony and who had been fired on first, defendant likewise had no right to shoot and, therefore, defendant charged with assault with intent to kill while armed was not entitled to an instruction of the defense of another based on theory that he drew his own gun and shot at security guard only after his companion fell to the ground and the security guard continued to fire. D.C. Code §§ 22-501, 22-502, 22-3202. *Taylor v. United States*, 380 A.2d 989, 1977 D.C. App. LEXIS 284 (1977).

Joint or separate trial of charges.

Refusal to grant severance in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, was not prejudicial to defendant due to fact that evidence placing a codefendant at scene of crime was quantitatively and qualitatively greater than evidence against defendant where evidence against defendant was both substantial and compelling, jury was specifically instructed to determine guilt of each defendant by considering only his own conduct and evidence which applied to him and where verdicts demonstrated that jury fulfilled its obligation

under charge. D.C. Code §§ 22-1801(b), 22-2401, 22-2901, 22-3202; Fed.Rules Crim.Proc. rules 8(b), 14, 18 U.S.C. *United States v. Leonard*, 494 F.2d 955, 1974 U.S. App. LEXIS 10300 (C.A.D.C. 1974).

In view of fact that scene of armed robbery and assaults on January 17 was different from that of armed robbery and assault on January 11 and assaults on January 16, the victims were different, and only common factor was that in each case the offender was a man wearing a fur coat and fur hat, and that there was no evidence of a common scheme or plan embracing commission of all of the offenses, it was prejudicial error to join trial of charges relating to offenses on January 17 with trial on other counts alleging offenses on January 11 and January 16, notwithstanding Government's contention that evidence of each offense was simple and distinct so that jury could not possibly have been confused. D.C. Code §§ 22-502, 22-2901, 22-3202; Fed.Rules Crim.Proc. rule 14, 18 U.S.C. *United States v. Carter*, 475 F.2d 349, 1973 U.S. App. LEXIS 12198 (C.A.D.C. 1973).

Trial court did not abuse its discretion by denying defendants' motion to sever their trial for gun-related offenses from codefendant, even though defendants claimed that the admissibility of a videotape concerning other crimes evidence of codefendant required severance; trial court carefully instructed the jury on the proper use of the videotape, most of counts defendants were charged with pertained to a joint venture executed by all of the defendants at the same time with a common purpose, and although three counts of offenses only applied to one individual defendant, evidence regarding each was kept separate and distinct. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

No conflict existed between defenses presented by defendant and codefendant which would warrant severance of charges, in multi-defendant prosecution arising from stabbing death of victim; codefendant's theory was one of self-defense, defendant maintained that defendant was acting in defense of codefendant, and there was testimony from several government witnesses as to activities of both defendants so that jury could not have been confused or misled simply by their joinder in single indictment. D.C. Code 1981, §§ 22-722(a)(3), 22-2401, 22-3202, 22-3204(b). *Sams v. United States*, 721 A.2d 945, 1998 D.C. App. LEXIS 229 (1998), writ of certiorari denied by 528 U.S. 1135, 120 S. Ct. 977, 145 L. Ed. 2d 928, 2000 U.S. LEXIS 832, 68 U.S.L.W. 3479 (2000), writ of certiorari denied by 531 U.S. 1015, 121 S. Ct.

575, 148 L. Ed. 2d 492, 2000 U.S. LEXIS 7864, 69 U.S.L.W. 3363 (2000).

Trial judge did not abuse his discretion in refusing to grant severance to defendant respecting obstruction of justice charge in prosecution for armed robbery, possession of firearm during commission of crime of violence, carrying pistol without license, and obstruction of justice, despite contention that defendant wished to testify respecting obstruction of justice charge and not other charges, where defendant's proposed testimony would not have been altogether exculpatory, and judge indicated his readiness to place reasonable restrictions on any cross-examination of defendant regarding armed robbery, provided such could be accomplished without unfairness to prosecution. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204, 22-3204(a), (a)(1). *Roy v. United States*, 652 A.2d 1098, 1995 D.C. App. LEXIS 6 (1995).

Defendant was not entitled to have first-degree murder charge severed from charge of conspiracy to distribute and possess illegal drugs with intent to distribute; defendant conceded that evidence of murder would be admissible at separate trial on conspiracy charge, and evidence relating to conspiracy would have been admissible at separate murder trial to show motive. Criminal Rule 14; D.C. Code 1981, §§ 22-2401, 22-3202, 33-541(a)(1), 33-549. *Void v. United States*, 631 A.2d 374, 1993 D.C. App. LEXIS 226 (1993).

The offenses of armed robbery and carrying a dangerous weapon were not sufficiently similar to justify joinder under rule, even though the same gun may have been used in both offenses, in that the two crimes share only a single element, and the armed robbery involved an alleged theft at gunpoint of a gold chain from an acquaintance, while the carrying of a dangerous weapon involved the possession of a BB gun in a public restroom the following day. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204; Criminal Rules 8, 8(a). *Roper v. United States*, 564 A.2d 726, 1989 D.C. App. LEXIS 188 (1989).

In a prosecution for armed robbery and carrying a dangerous weapon in which the two charges were improperly joined, there was not clear and convincing evidence that the defendant had committed the armed robbery, and thus evidence of the armed robbery would not have been admissible at separate trials on the weapons charge and the misjoinder was not harmless error, where the defendant was acquitted of the armed robbery charge. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204; Criminal Rule 8(a). *Roper v. United States*, 564 A.2d 726, 1989 D.C. App. LEXIS 188 (1989).

Reversal was required due to misjoinder of charges connected with armed robbery of two vending trucks and misjoinder of those charges with charge against defendant's brother for

being accessory after fact, receiving stolen property, and obstructing justice; trial was essentially swearing contest in which identifications by government witnesses were met by contradictory testimony from alibi witnesses; no physical evidence linked defendants to either robbery; identifications were impeached by discrepancies and inconsistencies in description of defendants; statements of defendant's brother implicating one defendant in second robbery were admitted; and prosecutor's closing argument tried to link offenses together. D.C. Code 1981, §§ 22-106, 22-722(a)(3), 22-2101, 22-2901, 22-3202; Criminal Rules 8(b), 14. *Morris v. United States*, 548 A.2d 1383, 1988 D.C. App. LEXIS 189 (1988).

Defendant's statement that defendant would become embarrassed and confounded by having to present separate defenses to robbery charges for two separate incidents and that defendant would testify as to one case but not other, but which did not reveal content of defendant's testimony, was not convincing showing that defendant had both important testimony to give concerning one count and strong need to refrain from testifying on other robbery count and, therefore, did not establish prejudice to defendant which would justify severance of prosecutions. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204; Criminal Rule 8(a). *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Two robbery incidents prosecuted against defendant in same trial, which were proved by prosecution's use of four witnesses testifying as to first robbery and then use of nine witnesses testifying as to second robbery, which were defended by claim of misidentification as to first robbery and denial of commission of any crime as to second robbery, which prosecutor argued as distinct offenses, which led trial court to instruct jury at beginning and end of trial to view robberies as separate and distinct incidents, involved sufficiently distinct and separate evidence as to each robbery, were not confused in mind of jury to prejudice of defendant, and, therefore, did not need to be severed. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204; Criminal Rule 8(a). *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Defendant's conversation with witness to robbery, in which defendant admitted having robbed store and threatened witness in order to prevent witness from testifying would be admissible in separate trial on armed robbery count, as well as in trial for obstruction of justice count, in that it was probative of defendant's consciousness of guilt, and was thus admission against interest, and it was directly probative of defendant's identity as one of robbers, and thus admissible under recognized exception to prohibition against evidence of

other crimes, and therefore counts did not have to be severed. D.C. Code 1981, §§ 22-722(a)(3), 22-3202. *Byrd v. United States*, 502 A.2d 451, 1985 D.C. App. LEXIS 536 (1985).

Inclusion of assault count against one individual may have resulted in some confusion and prejudice to defendant's case involving the murder of another individual on a different date; however, given the interest in judicial efficiency, and it could not be said that the trial court abused its discretion in refusing to sever the assault count. D.C. Code 1981, §§ 22-504, 22-2403, 22-3202. *Bowler v. United States*, 480 A.2d 678, 1984 D.C. App. LEXIS 571 (1984).

In prosecution for second-degree murder, attempted robbery, assault with intent to kill while armed, carrying a pistol without a license, assault with intent to kill while armed, and obstruction of justice, court's refusal to sever charges relating to death by strangling from shooting charges was not abuse of discretion since grant of severance during trial is left to court's discretion and under particular circumstances evidence of each crime was admissible in proof of others. D.C. Code 1981, §§ 22-501, 22-703, 22-2902, 22-3202, 22-3204. *Smith v. United States*, 470 A.2d 315, 1983 D.C. App. LEXIS 550 (1983), writ of certiorari denied by 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344, 1985 U.S. LEXIS 988, 53 U.S.L.W. 3598 (1985).

In prosecutions for murder, kidnapping, etc., arising out of the so-called "Hanafi" take-overs of three buildings, the trial court did not abuse its discretion in refusing to sever that count of the indictment charging assault with a deadly weapon. D.C. Code §§ 22-105a, 22-501, 22-502, 22-2101, 22-2401, 22-2403, 22-3202. *Khaalis v. United States*, 408 A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

Denial of motion to sever counts of indictment in proceeding in which accused was convicted of four rape offenses and other offenses was not abuse of discretion, in view of similar characteristics of such offenses, in which assailant entered through rear of apartments, awoke victims, threatened them with weapon, demanded silence and submission and committed no act of violence if there was compliance with his orders, in which, in three of the cases, he sought to prevent victims from getting good look at him and cut or threatened to cut phone lines and in which he cut off any pants worn by victims. D.C. Code §§ 22-502, 22-1801(a), 22-2801, 22-3202, 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Bridges v. United States*, 381 A.2d 1073, 1977 D.C. App. LEXIS 304 (1977), writ of certiorari denied by 439 U.S. 842, 99 S. Ct. 135, 58 L. Ed. 2d 141, 1978 U.S. LEXIS 2828 (1978).

Joint or separate trials of codefendants.

Fact that there was conflict in accused's de-

fenses, in that codefendants relied on separate alibi defenses and defendant admitted his presence at scene of offenses and in that such defendant's efforts to discredit testimony that he and a codefendant knocked out victim assertedly undermined such codefendant's alibi defense and fact that defendant did not testify and thus codefendants were precluded from cross-examining him did not so prejudice codefendants as to render refusal to grant severance an abuse of discretion where damaging implications of defendant's defense were corroborated by substantial testimony. D.C. Code §§ 22-1801(b), 22-2401, 22-2901, 22-3202. *United States v. Leonard*, 494 F.2d 955, 1974 U.S. App. LEXIS 10300 (C.A.D.C. 1974).

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. D.C. Code §§ 22-501, 22-2401, 22-2403, 22-2801, 22-3202. *United States v. Heinlein*, 490 F.2d 725, 1973 U.S. App. LEXIS 7581 (C.A.D.C. 1973).

Denial of defendant's pretrial motion for severance, in bank robbery prosecution in which defendant's brother was a codefendant, did not constitute abuse of discretion, where there were no statements by defendant's brother received in evidence against defendant, and at defendant's request jury was instructed that fact that defendants were brothers in and of itself should not lead them to conclude that they acted in concert in robbing the bank. 18 U.S.C. § 2113(a); 18 U.S.C. § 292(c); D.C. Code §§ 22-502, 22-2901, 22-3202; Fed. Rules Crim. Proc. rule 8, 18 U.S.C. *United States v. Hopkins*, 464 F.2d 816, 1972 U.S. App. LEXIS 8848 (C.A.D.C. 1972).

Trial judge's decision not to sever defendant's trial from non-testifying codefendants, in prosecution for voluntary manslaughter was appropriate, where extrajudicial statements from the codefendants were admissible. D.C. Code 1981, §§ 22-2405, 22-3202. *Plater v. United States*, 745 A.2d 953, 2000 D.C. App. LEXIS 38 (2000).

Even if defendant's and codefendant's defenses conflicted, defendant was not prejudiced by the conflict, so as to warrant severance of defendants, in prosecution for various offenses including first-degree murder and armed robbery; there was enough independent evidence of defendant's guilt so that trial court could reasonably find with substantial certainty that conflict in defenses alone would not sway jury to defendant guilty. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202; Criminal Rule 14. *Plater v. United States*, 745 A.2d 953, 2000 D.C. App. LEXIS 38 (2000).

Trial court's failure to sever charges in multi-defendant prosecution arising from stabbing death of victim did not create "spillover" prejudice against defendant by making trial so complex that jury was unable to decide guilt or innocence of each defendant separately from others, where one codefendant was acquitted of all charges, and thus, no basis existed for concluding that jury was confused or frustrated by complexity of evidence, or that jury could not fairly decide guilt or innocence of one defendant separately from others. D.C. Code 1981, §§ 22-722(a)(3), 22-2401, 22-3202, 22-3204(b). *Sams v. United States*, 721 A.2d 945, 1998 D.C. App. LEXIS 229 (1998), writ of certiorari denied by 528 U.S. 1135, 120 S. Ct. 977, 145 L. Ed. 2d 928, 2000 U.S. LEXIS 832, 68 U.S.L.W. 3479 (2000), writ of certiorari denied by 531 U.S. 1015, 121 S. Ct. 575, 148 L. Ed. 2d 492, 2000 U.S. LEXIS 7864, 69 U.S.L.W. 3363 (2000).

Joint trial of defendant for second-degree murder while armed and assault with a deadly weapon with codefendant charged with second-degree murder while armed did not cause jury to be inflamed against defendant by evidence of murder; it was undisputed that defendant cut victim on the wrist prior to his being stabbed by codefendant in the chest, and jury acquitted each of defendants for murder, convicting defendant instead of assault with deadly weapon and codefendant of assault with intent to kill while armed. D.C. Code 1981, §§ 22-501, 22-502, 22-2403, 22-3202, 23-311. *Jackson v. United States*, 650 A.2d 659, 1994 D.C. App. LEXIS 218 (1994).

Denying motion to sever trial of murder codefendants was not abuse of discretion, despite contention that prejudice from joint trial resulted from threats allegedly made by codefendant to government witness, given that threats or nature of that conversation were never revealed. D.C. Code 1981, §§ 22-2403, 22-3202. *Price v. United States*, 602 A.2d 641, 1992 D.C. App. LEXIS 22 (1992).

In prosecution wherein defendant and codefendant were charged with armed robbery and evidence against both defendants was essentially the same, and both men offered defense of alibi, court would not have had to sever trial even if defense counsel had requested it, and failure to sever trial sua sponte did not amount to plain error. D.C. Code §§ 22-2901, 22-3202. *Cunningham v. United States*, 408 A.2d 1240, 1979 D.C. App. LEXIS 508 (1979).

Where assault and weapon charges against one defendant were distinct in time and place from charges of first-degree murder while armed, brought against other defendants, and evidence of murder was overwhelmingly major portion of five-week trial while there was comparatively meager evidence on assault and weapon charges, and evidence of murder would not have been admissible at separate trial of

particular defendant on assault and weapon charges, it was error to deny severance. D.C. Code §§ 22-502, 22-2401, 22-3202, 22-3204, 23-311(c); D.C. Code SCR, Criminal Rule 8(b). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

Where assault and weapon charges against one defendant were joined for trial with murder charges against other defendants, particular defendant was prejudiced by association with evidence proving bloody and grotesque killing, and in view of reference throughout trial to defendants as group having name of particular defendant, associating particular defendant in minds of jurors with murder with which he was not charged, prejudice required reversal and there was thus abuse of discretion in denying severance. D.C. Code §§ 22-502, 22-2401, 22-3202, 22-3204, 23-311(c); D.C. Code SCR, Criminal Rule 8(b). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

Even assuming that defendant and codefendant had antagonistic defenses to armed robbery charge, where independent evidence of defendant's guilt was overwhelming and defendant did not demonstrate that alleged conflict in defenses in itself created danger that jury would unjustifiably infer defendant's guilt, any possible prejudice which may have resulted from joint trial was not such as to warrant reversal. D.C. Code §§ 22-2901, 22-3202, 23-311, 23-313; D.C. Code SCR, Criminal Rule 14. *Clark v. United States*, 367 A.2d 158, 1976 D.C. App. LEXIS 438 (1976).

Jurisdiction.

Even if joinder of D.C. Code offense of robbery with charges of possession of unregistered firearm, possession of firearm not identified by serial number, assault with intent to commit rape while armed and assault with a dangerous weapon was proper under rule pertaining to joinder of defendants, district court divested itself of jurisdiction over the robbery count when it granted defendants' pretrial motion to sever the robbery charge in order to avoid the possibly prejudicial atmosphere of a single trial. 26 U.S.C. (I.R.C.1954)s 5861(d, i); D.C. Code §§ 22-501, 22-502, 22-2901, 22-3202; Fed.Rules Crim.Proc. rules 8, 8(b), 14, 18 U.S.C.; 18 U.S.C. § 5010(b). *United States v. Jackson*, 562 F.2d 789, 1977 U.S. App. LEXIS 12056 (C.A.D.C. 1977).

Armed kidnapping charges brought against prisoner in District of Columbia jail as result of

riot and attempted escape were properly tried by federal court in the District of Columbia, as were charges of conspiracy and attempted escape from federal custody arising out of the same incident, so that District of Columbia statute providing minimum sentence for certain second offenders was properly applied. D.C. Code §§ 11-502(3), 22-3202; 18 U.S.C. §§ 371, 751(a). *United States v. Bridgeman*, 523 F.2d 1099, 1975 U.S. App. LEXIS 11742 (C.A.D.C. 1975), writ of certiorari denied by 425 U.S. 961, 96 S. Ct. 1743, 96 S. Ct. 1744, 48 L. Ed. 2d 206, 1976 U.S. LEXIS 1553 (1976).

Where District of Columbia superior court judge dismissed juvenile's petition for habeas corpus without prejudice to its being filed in the United States district court for the District of Columbia, the respondent was federal officer, petitioner was charged with federal offense as well as with violations of District of Columbia law and petitioner was challenging the conditions of his confinement, federal court had jurisdiction to consider the petition. D.C. Code §§ 16-1901, 16-2301, 16-2301(3)(A), 22-502, 22-2901, 22-3202, 23-110(d); 18 U.S.C. § 2114; 18 U.S.C. §§ 2241(c)(1, 3), 2254(b, c); U.S. Const. art. 1, § 9, cl. 2; Amend 8. *Bland v. Rodgers*, 332 F. Supp. 989, 1971 U.S. Dist. LEXIS 12463 (1971).

In view of defendant's concession that he approached complainant in his car within district, rode with complainant into Maryland and returned with him to district, and in view of fact that defendant was overheard by officer threatening complainant with injury if he did not remain silent while they were all at intersection concededly within district line, trial court did not lack jurisdiction of offenses of armed robbery, assault with dangerous weapon and mayhem and malicious disfigurement. D.C. Code §§ 11-923(b)(1), 22-502, 22-506, 22-2901, 22-3202; D.C. Code SCR, Criminal Rule 12(b)(2). *Adair v. United States*, 391 A.2d 288, 1978 D.C. App. LEXIS 567 (1978).

Jury trial rights.

Defendant was not barred from asking Court of Appeals to correct legal error arising from trial court's conduction of bench trial on lesser-included offense of simple possession of cocaine without explicit waiver of jury trial, following grant of motion for judgment of acquittal on charge of possession of cocaine with intent to distribute, on basis that defendant did not call footnote in controlling case to trial court's attention, where defendant did not request bench trial and voiced preference for jury verdict. D.C. Code 1981, §§ 22-3202, 33-541(a)(1), (d); Criminal Rules 23(a), 31(c). *White v. United States*, 729 A.2d 330, 1999 D.C. App. LEXIS 92 (1999).

Juvenile offenders, generally.

Defendant did not waive his right to appeal determination of government to charge him as

an adult, even though he pleaded guilty to an adult charge, where he informed trial court of his concerns about propriety of the charge before jeopardy attached, judgment was not entered, there was no attempt to deceive, and he pled after he had been assured by prosecutor and defense counsel that any challenge based on his status as a child could be raised at a later date. D.C. Code 1981, §§ 16-2301(3)(A), 16-2302, 22-501, 22-3202. *Logan v. United States*, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

Since appellant, who had been found guilty of attempted robbery while armed after a delinquency petition was filed against him, had become 18 years of age, so that he was no longer subject to jurisdiction of family division, and more than four years had passed since holding of suppression hearing, case would be remanded to trial court for additional findings, without prejudice to dismissal of original delinquency petition. D.C. Code 1973, §§ 16-2301(3), 17-306, 22-2902 to 22-3202. *In re P.*, 439 A.2d 460, 1981 D.C. App. LEXIS 404 (1981).

Lesser included offenses, generally.

Assault with dangerous weapon is lesser included offense of assault with intent to rob while armed. D.C. Code §§ 22-501, 22-502, 22-3202, 22-3204. *United States v. Chavis*, 476 F.2d 1137, 1973 U.S. App. LEXIS 10719 (C.A.D.C. 1973).

Merger of offenses.

Defendant's convictions under federal law for killing of witness with intent to prevent him from testifying and retaliation against witness did not merge with each other or with conviction under District of Columbia law for first-degree murder while armed, inasmuch as each offense contained element not found in others. 18 U.S.C. §§ 1512(a)(1)(A), 1513(a)(1)(B); D.C. Code 1981, §§ 22-240 to 22-3202. *United States v. Wilson*, 160 F.3d 732, 1998 U.S. App. LEXIS 29488 (C.A.D.C. 1998), writ of certiorari denied by 528 U.S. 828, 120 S. Ct. 81, 145 L. Ed. 2d 69, 1999 U.S. LEXIS 5162, 68 U.S.L.W. 3224 (1999).

Convictions of assault with a dangerous weapon merged with armed robbery convictions connected with same robbery of drugstore and would thus be set aside. *United States v. Toy*, 482 F.2d 741, 1973 U.S. App. LEXIS 8806 (C.A.D.C. 1973).

Where armed robberies and assaults with a dangerous weapon were committed against same persons, latter offenses merged into former, and convictions on assault charges could not stand, though a remand for resentencing was not required, where defendant had been given separate sentences, and all sentences were set to run concurrently. D.C. Code §§ 22-

502, 22-2901, 22-3202. *United States v. Toy*, 482 F.2d 741, 1973 U.S. App. LEXIS 8806 (C.A.D.C. 1973).

Where charges of assault with intent to commit rape while armed and charges of assault with a dangerous weapon arose from the same act or transaction, the latter charge, requiring proof of two of the three elements constituting former offense, merged with and became a lesser offense to the charge of assault with intent to commit rape while armed, barring conviction on the lesser offense. D.C. Code §§ 22-501, 22-502, 22-3202. *United States v. Benn*, 476 F.2d 1127, 1972 U.S. App. LEXIS 6483 (C.A.D.C. 1972).

Where evidence in proof of count II which charged defendant under District of Columbia robbery and crime of violence statutes with robbing post office custodian of money showed that defendant actually consummated the same robbery he was charged with attempting in count I under federal mail robbery statute, defendant could not be convicted of both the attempt and the completed robbery since Congress did not intend that a statute drawn to proscribe attempt should also support a separate conviction for completed offense when defendant is charged with and convicted of substantially the same crime he is charged with attempting. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3202. *United States v. Spears*, 449 F.2d 946, 1971 U.S. App. LEXIS 11849 (C.A.D.C. 1971).

The part of federal mail robbery statute prohibiting assault was intended by Congress to prohibit certain kinds of attempts to rob and cannot support an independent conviction when a defendant is charged with and convicted of committing, in violation of robbery statute applicable in District of Columbia, the same crime he is charged with attempting. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3202. *United States v. Spears*, 449 F.2d 946, 1971 U.S. App. LEXIS 11849 (C.A.D.C. 1971).

Where helper on truck was detained and transported against his will to a different location, several miles away from scene where truck was hijacked, and purpose of detention, to facilitate success of hijacking, was to secure benefit to hijackers, two separate and distinct crimes were committed, i.e., kidnapping and armed robbery of contents of truck, and offenses did not merge. D.C. Code §§ 22-2101, 22-2901, 22-3202. *United States v. Wolford*, 444 F.2d 876, 1971 U.S. App. LEXIS 11155 (C.A.D.C. 1971).

Three of defendant's four convictions for possession of a firearm during the commission of a crime of violence (PFDCV) merged, as convictions were based on single possession of single weapon during violent act. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S.

1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

Robbery conviction with respect to victim of fatal shooting should be vacated, upon merger of convictions for first-degree premeditated murder and first-degree felony murder with robbery as underlying felony, only if the trial court determined on remand that premeditated murder was the murder conviction that should be vacated. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Aggravated assault while armed (AAWA) does not merge with assault with intent to murder while armed (AWIMWA); AAWA requires proof of serious bodily injury, which AWIMWA does not, while AWIMWA requires proof of a specific intent to kill and malice, which AAWA does not. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Wharton's Rule, as exception to general rule that conspiracy and completed substantive offense are discrete crimes for which separate sanctions may be imposed, does not preclude conviction in a single trial of conspiracy to commit armed robbery and the substantive offense of armed robbery or its lesser-included offense of attempted armed robbery. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Conviction for aggravated assault while armed merged with conviction for malicious disfigurement while armed. *Hudson v. United States*, 790 A.2d 531, 2002 D.C. App. LEXIS 8 (2002).

While evidence supported convictions, kidnapping convictions that were rendered under alternate theories of intent had to merge. D.C. Code 1981, §§ 22-2101, 22-3202. *Green v. United States*, 718 A.2d 1042, 1998 D.C. App. LEXIS 161 (1998), writ of certiorari denied by 526 U.S. 1011, 119 S. Ct. 1156, 143 L. Ed. 2d 222, 1999 U.S. LEXIS 1836, 67 U.S.L.W. 3560 (1999).

Defendant's convictions for armed mayhem and assault with intent to kill while armed (AWIKWA) did not merge, even though they arose from single shooting. D.C. Code 1981, §§ 22-501, 22-506, 22-3202. *Green v. United States*, 718 A.2d 1042, 1998 D.C. App. LEXIS 161 (1998), writ of certiorari denied by 526 U.S. 1011, 119 S. Ct. 1156, 143 L. Ed. 2d 222, 1999 U.S. LEXIS 1836, 67 U.S.L.W. 3560 (1999).

Premeditated murder and three felony murder convictions had to be reduced to a single murder conviction. D.C. Code 1981, §§ 22-2401, 22-3202. *Green v. United States*, 718 A.2d 1042, 1998 D.C. App. LEXIS 161 (1998), writ of certiorari denied by 526 U.S. 1011, 119 S. Ct.

1156, 143 L. Ed. 2d 222, 1999 U.S. LEXIS 1836, 67 U.S.L.W. 3560 (1999).

Conviction of assault with a dangerous weapon merged with convictions of both mayhem while armed and armed robbery relating to same victim. *Lee v. United States*, 699 A.2d 373, 1997 D.C. App. LEXIS 193 (1997).

Convictions on mayhem while armed and assault with dangerous weapon merged into one offense. D.C. Code 1981, §§ 22-501, 22-506, 22-3202. *Sterling v. United States*, 691 A.2d 126, 1997 D.C. App. LEXIS 38 (1997), amended by 1997 D.C. App. LEXIS 107 (D.C. May 13, 1997).

No merger occurred between counts of kidnapping while armed and assault with dangerous weapon (ADW) directed against different victims, during same criminal incident, or between any of these counts and any other count involving crimes directed at still other identifiable victims. D.C. Code 1981, §§ 22-502, 22-2101, 22-3202. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Despite common victim, kidnapping count did not merge with armed robbery count, since the two crimes had different elements; kidnapping required proof that victim was seized or detained which armed robbery did not, and armed robbery required proof that property of value was taken, which kidnapping did not. D.C. Code 1981, §§ 22-2101, 22-2901, 22-3202. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Two first degree burglary while armed counts from same criminal incident merged, since both were based on defendants' entry into one apartment. D.C. Code 1981, §§ 22-1801(a), 22-3202. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

First-degree burglary while armed count did not merge with kidnapping, armed robbery, or assault with dangerous weapon (ADW) counts from same criminal incident, since burglary required proof of element that other crimes did not, and kidnapping, armed robbery and assault with dangerous weapon all required proof of elements that burglary did not. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2101, 22-2901, 22-3202. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Possession of firearm during crime of violence (PFCV) count did not merge with any kidnapping "while armed" count, burglary while armed count, armed robbery count, or assault with dangerous weapon (ADW) count from same criminal incident. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2101, 22-2901, 22-3202, 22-3204(b). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Armed robbery count did not merge with assault with dangerous weapon counts (ADW) from same criminal incident, since armed robbery count concerned different victim from

identifiable victims of ADW counts. D.C. Code 1981, §§ 22-502, 22-2901, 22-3202. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

First-degree burglary while armed count did not merge with single carrying pistol without license (CPWL) count from same criminal incident, since burglary count required proof that defendant entered dwelling of another person while armed with or "having readily available" a weapon which CPWL did not, and CPWL count specifically required "carrying" operable, unlicensed pistol which burglary did not. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-3204(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Armed robbery count did not merge with carrying pistol without license (CPWL) count from same criminal incident, as each statute required proof of element that other did not and each provision served distinct societal interest. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

First-degree burglary while armed count did not merge with single possession of prohibited weapon (PPW) count, from same criminal incident, since first-degree burglary required entry which PPW did not, and PPW required possession of specific prohibited weapon which first-degree burglary did not. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Armed robbery count did not merge with possession of prohibited weapon (PPW) count, since robbery required proof of taking which PPW did not, and PPW required possession of specifically prohibited weapon which armed robbery did not. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Two first-degree burglary while armed charges from same criminal incident merged, where both were based on defendants' entry into one apartment. D.C. Code 1981, §§ 22-1801(a), 22-3202. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

First-degree burglary while armed count did not merge with armed robbery count or with assault with dangerous weapon (ADW) count, since each required proof of element the other did not. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2901, 22-3202. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Convictions for second-degree murder while armed and armed robbery merged with conviction for felony murder while armed. D.C. Code 1981, §§ 22-2401, 22-2403, 22-2901, 22-3202. *Gresham v. United States*, 654 A.2d 871, 1995 D.C. App. LEXIS 32 (1995), writ of certiorari denied by 516 U.S. 854, 116 S. Ct. 155, 133 L.

Ed. 2d 99, 1995 U.S. LEXIS 5969, 64 U.S.L.W. 3243 (1995).

Conviction for carnal knowledge of a minor merged into conviction for rape where the offenses arose from single sexual assault on a single minor victim. D.C. Code 1981, §§ 22-2801, 22-3202. *Davis v. United States*, 641 A.2d 484, 1994 D.C. App. LEXIS 67 (1994), writ of certiorari denied by 514 U.S. 1028, 115 S. Ct. 1384, 131 L. Ed. 2d 237, 1995 U.S. LEXIS 2189, 63 U.S.L.W. 3690 (1995).

Conviction for possession of firearm during crime of violence did not merge with predicate convictions for armed robbery, burglary while armed, and assault with intent to commit robbery while armed. D.C. Code 1981, § 22-3204(b). *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Offenses of attempted armed robbery and assault with dangerous weapon merged; both were committed against same victim and achieved by same action of placing gun against victim's stomach and demanding his money. D.C. Code 1981, §§ 22-502, 22-2901. *Morris v. United States*, 622 A.2d 1116, 1993 D.C. App. LEXIS 79 (1993), writ of certiorari denied by 510 U.S. 899, 114 S. Ct. 270, 126 L. Ed. 2d 221, 1993 U.S. LEXIS 6183, 62 U.S.L.W. 3252 (1993).

Once defendant's conviction for assault with dangerous weapon merged with conviction for attempted armed robbery, his related convictions for possession of firearm during crime of violence or dangerous offense also merged, as they concerned violations of same statute by same actions of placing gun against victim's stomach and demanding his money, and there was no indication of legislative intent to allow multiple sentences in such circumstances. D.C. Code 1981, §§ 22-502, 22-2901, 22-3204(b). *Morris v. United States*, 622 A.2d 1116, 1993 D.C. App. LEXIS 79 (1993), writ of certiorari denied by 510 U.S. 899, 114 S. Ct. 270, 126 L. Ed. 2d 221, 1993 U.S. LEXIS 6183, 62 U.S.L.W. 3252 (1993).

Fact-based approach to determining whether offenses merge remains appropriate where defendant is convicted of two violations of same statute. *Morris v. United States*, 622 A.2d 1116, 1993 D.C. App. LEXIS 79 (1993), writ of certiorari denied by 510 U.S. 899, 114 S. Ct. 270, 126 L. Ed. 2d 221, 1993 U.S. LEXIS 6183, 62 U.S.L.W. 3252 (1993).

Defendant's convictions of carrying pistol without license and possession of firearm during crime of violence or dangerous offense did not merge and, thus, imposition of separate

sentences for the offenses did not violate double jeopardy clause, considering legislative intent and elements of offenses. D.C. Code 1981, § 22-3204(a, b); U.S. Const.Amend. 5. *Ray v. United States*, 620 A.2d 860, 1993 D.C. App. LEXIS 37 (1993).

Conviction for kidnapping did not merge with convictions for assault with intent to rape while armed, mayhem while armed, and assault with a deadly weapon; assault-related convictions required proof that defendant was armed, and kidnapping conviction required proof of asportation or confinement. D.C. Code 1981, §§ 22-501, 22-506, 22-2101, 22-3202. *Whitaker v. United States*, 616 A.2d 843, 1992 D.C. App. LEXIS 287 (1992).

Council of the District of Columbia did not intend for offense of possession of a firearm during a dangerous crime to merge with an offense subject to enhanced penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Thomas v. United States*, 602 A.2d 647, 1992 D.C. App. LEXIS 23 (1992).

Offenses of assault with dangerous weapon and possession of firearm during commission of crime of violence did not merge because each required proof of element that the other did not, and each addressed distinct societal interest. D.C. Code 1981, §§ 22-502, 22-3204(b). *Freeman v. United States*, 600 A.2d 1070, 1991 D.C. App. LEXIS 334 (1991).

Assault with dangerous weapon was lesser included offense of armed robbery because all elements of assault with dangerous weapon were included in armed robbery and assault was committed to effect robbery; therefore, conviction for assault with dangerous weapon merged into conviction for armed robbery and double jeopardy clause precluded punishment for both defenses. U.S. Const.Amend. 5; D.C. Code 1981, §§ 22-501, 22-2901, 22-3202. *Norris v. United States*, 585 A.2d 1372, 1991 D.C. App. LEXIS 26 (1991).

As long as assault was committed for purposes of effecting robbery, conviction for assault with dangerous weapon merges into conviction for armed robbery and absent intent to kill, degree of assault is irrelevant. D.C. Code 1981, §§ 22-501, 22-2901, 22-3202. *Norris v. United States*, 585 A.2d 1372, 1991 D.C. App. LEXIS 26 (1991).

Convictions for malicious disfigurement and for mayhem did not merge; Government offered evidence that victim suffered permanent disabilities which did not involve permanent disfigurement as necessary to show mayhem and that she had suffered disfigurement and injuries to her appearance which were not necessarily disabling as necessary to support malicious disfigurement. D.C. Code 1981, §§ 22-

506, 22-3202. *Edwards v. United States*, 583 A.2d 661, 1990 D.C. App. LEXIS 298 (1990).

Defendant's conviction for unauthorized use of motor vehicle merged with more serious offense of grand larceny while armed, where there was nothing in defendant's unlawful use of vehicle conviction that was not also used as proof of grand larceny while armed; thus, resulting 18 to 54 months consecutive imprisonment meted out by trial court for unlawful use of motor vehicle violated Fifth Amendment guaranty against double jeopardy. U.S. Const.Amend. 5; D.C. Code 1981, §§ 22-3202, 22-3812, 22-3815. *Kirk v. United States*, 510 A.2d 499, 1986 D.C. App. LEXIS 345 (1986).

Armed assault with intent to rob victim did not merge with armed robbery of assault victim's husband where victim was frightened into abandoning control of property upon sighting armed man so that assault was complete before husband appeared to assert his control over property. D.C. Code 1981, §§ 22-501, 22-2901, 22-3202. *Davis v. United States*, 498 A.2d 242, 1985 D.C. App. LEXIS 490 (1985).

Defendants' convictions for one count of armed robbery merged with their convictions for felony-murder. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202. *Derrington v. United States*, 488 A.2d 1314, 1985 D.C. App. LEXIS 329 (1985), writ of certiorari denied by 486 U.S. 1009, 108 S. Ct. 1738, 100 L. Ed. 2d 201, 1988 U.S. LEXIS 2187, 56 U.S.L.W. 3789 (1988).

Defendants' convictions for felony-murder while armed and the underlying felony of first-degree burglary while armed merged, and thus, case would be remanded with instructions to vacate the armed burglary conviction. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204; 18 U.S.C. §§ 5005 et seq., 5010(c). *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

Assault with dangerous weapon was lesser-included offense of robbery while armed and two offenses merged where they both arose out of same act of defendant. *Leftwich v. United States*, 460 A.2d 993, 1983 D.C. App. LEXIS 378 (1983).

Convictions for assault with a dangerous weapon were not subject to being reversed on ground that they merged with convictions for malicious disfigurement while armed where it was clear that the jury found defendants guilty of assault with a dangerous weapon as a lesser included offense of either the assault with intent to kill while armed count or the assault with intent to commit robbery while armed count and that, by specific request, the lesser included offense charge was limited to either of those counts. D.C. Code 1973, §§ 22-401, 22-501, 22-502, 22-506, 22-3202, 22-3502. *Perkins*

v. United States, 446 A.2d 19, 1982 D.C. App. LEXIS 363 (1982).

Doctrine of merger did not apply to charge of assault with intent to kill while armed and charge of mayhem while armed, although offenses arose from single occurrence, since elements of proof of two crimes were different, statutes proscribing crimes protected different societal interests, and infliction of permanent injury, which is required for finding of mayhem, is not integral part of every assault. D.C. Code §§ 22-501, 22-506. *Bridgeford v. United States*, 411 A.2d 633, 1980 D.C. App. LEXIS 230 (1980).

In prosecution for murder, kidnapping, and assault arising out of the "Hanafi" take-overs of three buildings, the kidnapping convictions of defendants did not merge with the other offenses. D.C. Code §§ 22-105a, 22-501, 22-502, 22-2101, 22-2401, 22-2403, 22-3202. *Khaalis v. United States*, 408 A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

Offense of carrying pistol without license does not merge into offense of armed robbery. D.C. Code §§ 22-2901, 22-3202, 22-3204. *Rouse v. United States*, 402 A.2d 1218, 1979 D.C. App. LEXIS 371 (1979).

Convictions for first-degree burglary, robbery and assault with a dangerous weapon merged with more serious offenses, i.e., burglary in first degree while armed and armed robbery, and case was accordingly remanded with instructions to vacate convictions and related sentences for the first-mentioned convictions. D.C. Code §§ 22-502, 22-1801, 22-2901, 22-3202, 22-3204. *Evans v. United States*, 392 A.2d 1015, 1978 D.C. App. LEXIS 327 (1978).

Assault with a dangerous weapon committed by one defendant who, while armed with shotgun, threatened and warned robbery victims to return to apartment building when victims attempted to follow robbers, was separate and distinct from assault with intent to commit robbery while armed committed immediately previous to warning not to follow by defendant and other robbers in hallway of apartment building, and thus former offense did not merge into latter. D.C. Code §§ 22-501, 22-502, 22-3202. *Heiligh v. United States*, 379 A.2d 689, 1977 D.C. App. LEXIS 252 (1977).

Although defendant's robbery and assault with a dangerous weapon convictions had to be vacated, defendant's conviction of possession of prohibited weapon, which required proof of specific intent to use weapon unlawfully against another, an element not present in armed robbery, robbery, or assault with a dangerous weapon, did not merge into his armed robbery conviction. D.C. Code §§ 22-502, 22-2901, 22-3202, 22-3214(b). *Woody v. United States*, 369 A.2d 592, 1977 D.C. App. LEXIS 420 (1977).

A count charging assault with a dangerous weapon is merged with a count charging armed robbery. D.C. Code §§ 22-502, 22-2901, 22-3202. *Smith v. United States*, 312 A.2d 781, 1973 D.C. App. LEXIS 406 (1973).

Nature and elements of offenses.

—Assault offenses, nature and elements of offenses.

Serious bodily injury, an element of aggravated assault while armed (AAWA), usually involves a life-threatening or disabling injury, but the court must also consider all the consequences of the injury to determine whether the appropriate "high threshold of injury" has been met. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

The fact that an individual suffered from knife or gunshot wounds does not make that injury a per se "serious bodily injury," an element of aggravated assault while armed (AAWA). *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

To be "protracted and obvious disfigurement," for purposes of "serious bodily injury" element of aggravated assault while armed (AAWA), a scar must be a serious permanent or physical disfigurement, meaning that the person is appreciably less attractive or that a part of his body is to some appreciable degree less useful or functional than it was before the injury. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

For a victim to suffer "extreme physical pain," for purposes of "serious bodily injury" element of aggravated assault while armed (AAWA), the level of pain must be exceptionally severe, if not unbearable. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

For purposes of aggravated assault while armed charge, the weapon used need not be a conventional weapon, but can be any instrument that the defendant uses as a weapon and which can cause serious bodily injury. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

Defendant's conclusory statement that he had been intoxicated did not negate his specific intent to commit the crime of assault with intent to kill while armed; defendant could not

remember how much alcohol he had consumed, and there was no evidence that defendant was incapacitated by his intoxication. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Defendant could be convicted of assault on police officer with dangerous weapon based on theory of intent to frighten, even if officer was not aware that defendant was reaching for his pistol and bringing it up, where evidence that defendant did reach for pistol was reliable and it was reasonable for a juror to find that defendant had necessary intent either to injure or create apprehension of fear in officer; it was not necessary that officer actually experience apprehension or fear. *Parks v. United States*, 627 A.2d 1, 1993 D.C. App. LEXIS 135 (1993).

— Crimes of violence, nature and elements of offenses.

Offense of assault of police officer with dangerous weapon could be predicate offense for conviction of possession of firearm while committing crime of violence even though assault on police officer with dangerous weapon was not specifically listed as crime of violence. D.C. Code 1981, §§ 22-3201(f), 22-3204(b). *Parks v. United States*, 627 A.2d 1, 1993 D.C. App. LEXIS 135 (1993).

When interpreting statutory provision establishing as entirely separate offense use of firearm while committing crime of violence, it is reasonable to conclude that section is violated if crime committed encompasses crime of violence as defined, whether or not defendant is convicted of that precise crime. *Parks v. United States*, 627 A.2d 1, 1993 D.C. App. LEXIS 135 (1993).

— Dangerous or deadly weapon.

As an enhancement provision, the “while armed” statute does not require the use of or the intent to use a weapon; it requires mere availability of a weapon. *Perez v. United States*, 968 A.2d 39, 2009 D.C. App. LEXIS 57 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 474, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7527, 78 U.S.L.W. 3237 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 473, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7505, 78 U.S.L.W. 3237 (2009).

While the weapons covered under statute setting forth additional penalties for committing crime when armed are prohibited from possession when used in connection with the commission of a crime of violence or dangerous crime, mere possession is prohibited only for operable weapons under statute prohibiting possession of weapons during commission of crime of violence. D.C. Code §§ 22-4502(a). *Price v. United States*, 813 A.2d 169, 2002 D.C. App. LEXIS 723 (2002).

An “imitation pistol,” within meaning of the “armed” enhancement to a crime of violence or a dangerous crime, is any object that resembles an actual pistol closely enough that a person observing it in the circumstances would reasonably believe it to be a pistol. *Smith v. United States*, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Hot clothes iron was “dangerous weapon” needed to support conviction for armed rape where victim testified that defendant’s use of hot iron resulted in serious burns to victim’s chest and abdomen. D.C. Code 1981, § 22-3202(a). *Johnson v. United States*, 613 A.2d 888, 1992 D.C. App. LEXIS 213 (1992).

In determining whether object used during assault was a “dangerous weapon” court may look to use to which object was put during assault, and injury inflicted is another important, and often decisive, factor in establishing dangerousness. D.C. Code 1981, § 22-3202(a). *Arthur v. United States*, 602 A.2d 174, 1992 D.C. App. LEXIS 13 (1992).

Automobile operated with gross negligence is not a “dangerous weapon” as required to support conviction for involuntary manslaughter while armed. D.C. Code 1981, § 22-3202(a). *Reed v. United States*, 584 A.2d 585, 1990 D.C. App. LEXIS 328 (1990).

Stationary bathroom fixtures were not “dangerous weapons” with which defendant could be armed within meaning of mayhem while armed and malicious disfigurement while armed statutes; attached sink, toilet, and bathtub against which defendant alleged hurled his wife were preexisting part of surroundings in which defendant found himself while perpetrating assault and not something which defendant could possess or with which he could arm himself. D.C. Code 1981, §§ 22-502, 22-506, 22-3202. *Edwards v. United States*, 583 A.2d 661, 1990 D.C. App. LEXIS 298 (1990).

Inoperable air pistol did not constitute “dangerous weapon,” within meaning of statute prohibiting the carrying of “dangerous weapon,” where pistol was not inherently dangerous due to its inoperability, and defendant did not use it in manner which rendered it so. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Pencil is capable of causing bodily harm and thus may in some circumstances be “dangerous weapon.” D.C. Code 1981, §§ 22-502, 22-506, 22-3202, 22-3202(a). *Wynn v. United States*, 538 A.2d 1139, 1988 D.C. App. LEXIS 51 (1988).

In determining whether weapon is dangerous weapon, best evidence of dangerous character is injury actually inflicted by weapon. D.C. Code 1981, §§ 22-502, 22-506, 22-3202, 22-3202(a). *Wynn v. United States*, 538 A.2d 1139, 1988 D.C. App. LEXIS 51 (1988).

Under statute providing for punishment of one who commits crime of violence while

"armed with or having readily available any pistol or firearm (or imitation thereof) or other dangerous or deadly weapon," an "imitation" or blank pistol is to be considered a "dangerous or deadly weapon." D.C. Code §§ 22-2901, 22-3202. *Meredith v. United States*, 343 A.2d 317, 1975 D.C. App. LEXIS 225 (1975).

— Drug offenses, nature and elements of offenses.

Fact that the evidence was insufficient to establish that defendant possessed drugs within 1,000 feet of a school, as required for conviction of possession with intent to distribute cocaine in a drug free zone, did not require acquittal of conviction for possession of a firearm during commission of a dangerous crime; even without distance element being met, conviction of lesser offense of drug charge was valid, and this formed the necessary predicate for the weapon conviction. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Operable pistol in dresser drawer, just a few feet away from both defendants as they jointly engaged in series of drug transactions, met definition of "readily available" for purposes of offenses of distribution of cocaine while armed and possession of cocaine while armed with intent to distribute it. D.C. Code 1981, § 22-3202. *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

For purposes of offenses of distribution of cocaine while armed and possession of cocaine while armed with intent to distribute it, term "readily available" includes operable pistol lying on top of television set within defendant's immediate reach. D.C. Code 1981, § 22-3202. *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

— Homicide offenses, nature and elements of offenses.

Essential elements of felony-murder while armed are that defendant, while perpetrating or attempting to perpetrate a specified felony while armed, inflicted injury on victim from which he died; requirement of underlying felony operates as mechanism by which jury can infer state of mind required for first-degree murder. D.C. Code 1973, §§ 22-2401, 22-3202. *Head v. United States*, 451 A.2d 615, 1982 D.C. App. LEXIS 437 (1982).

— Kidnapping offenses, nature and elements of offenses.

To prove kidnapping while armed, prosecution only had to prove defendant expected to gain some kind of benefit by his actions; prosecution did not have to establish defendant sought revenge, which was only one of many possible motives for kidnapping. D.C. Code 1981, §§ 22-2101, 22-3202. *Dade v. United*

States, 663 A.2d 547, 1995 D.C. App. LEXIS 287 (1995).

Any pistol or other firearm was, by statutory definition, a dangerous or deadly weapon, and jury was not required to find specifically that particular pistol was a dangerous or deadly weapon to find defendant guilty of kidnapping while armed, although defendant alleged that weapon was not loaded; therefore, defendant was not entitled to instruction on "while armed" component of offense which included definition of dangerous or deadly weapon. D.C. Code 1981, § 22-3202(a). *Dade v. United States*, 663 A.2d 547, 1995 D.C. App. LEXIS 287 (1995).

Involuntary nature of seizure and detention is essence of crime of kidnapping. D.C. Code 1973, §§ 22-2101, 22-3202. *Head v. United States*, 451 A.2d 615, 1982 D.C. App. LEXIS 437 (1982).

A separate conviction for kidnapping can be sustained when movement places victim in greater danger or makes it more likely that perpetrator will succeed in underlying crime and will not be apprehended. D.C. Code §§ 22-2101, 22-3202. *Beck v. U.S.*, 402 A.2d 418, 1979 D.C. App. LEXIS 372 (1979).

Action of defendant in forcing complainant into house at knifepoint for purpose of rape or robbery not only made it easier for defendant to commit offenses, but also subjected complainant to greater danger and was such as to constitute crime of armed kidnapping despite claim that movement of complainant was merely incidental to rape or robbery. D.C. Code §§ 22-2101, 22-3202. *Beck v. U.S.*, 402 A.2d 418, 1979 D.C. App. LEXIS 372 (1979).

The forcible detention and carrying away of victim, during which he was transported, via automobile, for 25 blocks and which began before and continued after he was forced to yield his money and other valuables, was not a detention approximately coextensive with or a necessary incident to the armed robbery offense, and, thus, there had been a separate kidnapping offense of which defendant could be convicted in addition to her conviction of armed robbery. D.C. Code §§ 22-2101, 22-2901, 22-3202. *Sinclair v. United States*, 388 A.2d 1201, 1978 D.C. App. LEXIS 490 (1978), writ of certiorari denied by 439 U.S. 1118, 99 S. Ct. 1026, 59 L. Ed. 2d 77, 1979 U.S. LEXIS 517 (1979).

— Mayhem, nature and elements of offenses.

Elements of mayhem while armed are act causing permanent injury to another, general intent to do injurious act, willful and malicious commission of act and being armed with or having readily available dangerous weapon. D.C. Code 1981, § 22-3202. *Wynn v. United*

States, 538 A.2d 1139, 1988 D.C. App. LEXIS 51 (1988).

— Robbery offenses, nature and elements of offenses.

Where defendants approached victim and positioned themselves on either side of him and one said, "Let me have it," while one stuck a pistol against victim's ribs, and where victim attempted to toss envelope containing money to a stranger and one of the defendants immediately picked up the envelope and ran, joined by the other defendant, defendant's act of picking up the envelope, if it did not constitute a taking from the "person" of the victim, at least constituted taking from victim's "immediate actual possession" within robbery statute. D.C. Code §§ 22-2901, 22-3202. *United States v. Dixon*, 469 F.2d 940, 1972 U.S. App. LEXIS 7038 (C.A.D.C. 1972).

— Sexual assault offenses, nature and elements of offenses.

In prosecutions for assault with intent to commit rape while armed, the assault with dangerous weapon need not occur simultaneously with events from which jury could reasonably infer specific intent to rape. D.C. Code 1981, §§ 22-501, 22-3202. *Glascoe v. United States*, 514 A.2d 455, 1986 D.C. App. LEXIS 409 (1986).

Persons liable, generally.

To establish aiding and abetting of codefendant's armed robbery of victim so as to support conviction of defendant for armed robbery, prosecution was obliged to prove that codefendant in some sort associated himself with the venture, that he participated in it as something that he wished to bring about, that he sought by his action to make it succeed. D.C. Code 1981, §§ 22-2901, 22-3202. *Roy v. United States*, 652 A.2d 1098, 1995 D.C. App. LEXIS 6 (1995).

Evidence was insufficient to support finding that codefendant's armed robbery of victim, who was attempting to purchase handgun, would follow in ordinary course of events, or was natural and probable consequence of planned handgun sale, so as to support defendant's conviction for armed robbery as aider and abettor, despite fact that codefendant robbed victim after defendant told victim to see codefendant respecting handgun purchase; armed robbery was qualitatively different from handgun purchase and possible finding that defendant should have known it was conceivable codefendant might rob victim was insufficient to support conviction. D.C. Code 1981, §§ 22-2901, 22-3202. *Roy v. United States*, 652 A.2d 1098, 1995 D.C. App. LEXIS 6 (1995).

To be convicted as accomplice of armed robbery, it must have been reasonably foreseeable to accomplice that some type of weapon would

be required. D.C. Code 1981, §§ 22-2901, 22-3202. *Ingram v. United States*, 592 A.2d 992, 1991 D.C. App. LEXIS 156 (1991), writ of certiorari denied by 502 U.S. 1017, 112 S. Ct. 667, 116 L. Ed. 2d 757, 1991 U.S. LEXIS 7189, 60 U.S.L.W. 3435 (1991).

Defendant's conviction as an aider and abettor of voluntary manslaughter while armed was proper even though codefendant was convicted of second-degree murder in that voluntary manslaughter while armed is lesser included offense within second-degree murder while armed and jury necessarily found codefendant's conduct included voluntary manslaughter while armed. D.C. Code §§ 22-2405, 22-3202. *Branch v. United States*, 382 A.2d 1033, 1978 D.C. App. LEXIS 423 (1978).

An instruction under the aiding and abetting statute is not necessary in order for the acts of one principal in furtherance of a crime to be imputed to another principal; hence, fact that defendant may have only held gun during armed robbery of supermarket did not require finding that since he did not physically commit all elements of the offense he could not be held legally responsible for the acts of the other individual, who seized the cash from the safe, unless he was found to have aided and abetted such individual. D.C. Code §§ 22-105, 22-502, 22-2901 to 22-3202. *Hazel v. United States*, 353 A.2d 280, 1976 D.C. App. LEXIS 486 (1976).

Although defendant may only have held gun during course of armed robbery of supermarket, acts of his accomplice in taking money from the safe would be imputed to defendant, as a coprincipal, by virtue of fact that defendant himself committed one of the necessary elements of the crime. D.C. Code §§ 22-2901 to 22-3202. *Hazel v. United States*, 353 A.2d 280, 1976 D.C. App. LEXIS 486 (1976).

Pleas.

Trial court satisfied requirements of rule governing acceptance of guilty pleas by informing defendant of both the mandatory minimum sentence and the maximum sentence he could receive for manslaughter while armed, and by confirming that he understood both. *Goodall v. United States*, 759 A.2d 1077, 2000 D.C. App. LEXIS 273 (2000).

Evidence was sufficient to provide factual basis for "armed" element of offense of unlawfully possessing cocaine with intent to distribute it while armed, for purposes of determining whether to allow withdrawal of guilty plea; evidence that defendant, who began darting around living room of apartment after police entered with search warrant, was seized within arm's reach of revolver lying on top television set, that defendant knew gun was there and was operable, that defendant had substantial quantity of cocaine packaged for distribution on his person, and that there were other guns and

beepers in apartment, was sufficient to show that defendant possessed drugs for distribution while having gun "readily available," for purposes of statute providing additional penalty for committing crime when armed. D.C. Code 1981, §§ 22-3202, 22-3202(a)(1), 33-541(a)(1); Criminal Rules 11(f), 32(e). *Morton v. United States*, 620 A.2d 1338, 1993 D.C. App. LEXIS 45 (1993).

As respects allegation of defendant, charged with armed robbery and carrying dangerous weapon, that his absence from status hearing, at which defense counsel was served with information revealing Government's intention to seek additional punishment under recidivist statute, deprived defendant of meaningful right to participate in plea bargaining, evidence established that counsel fully advised his client; furthermore, there was no absolute right to bargain. D.C. Code §§ 22-2901, 22-3202, 22-3202(a)(2), 22-3204, 23-111. *Smith v. United States*, 356 A.2d 650, 1976 D.C. App. LEXIS 533 (1976).

Presumptions and burden of proof—Dangerous or deadly weapon.

If instrument found on defendant after arrest was not used in crime and is not per se dangerous weapon, Government must show something in addition to fact that it was found on defendant to meet tests laid down for various dangerous weapons statutes. D.C. Code §§ 22-502, 22-3204, 22-3214. *Cooper v. United States*, 368 A.2d 554, 1977 D.C. App. LEXIS 403 (1977).

In prosecution for commission of crime of violence while armed with a dangerous or deadly weapon, it is not required that Government prove that gun used in an armed offense was loaded or operable, and testimony that object which appeared to be gun was involved is sufficient to show use of dangerous weapon. D.C. Code §§ 22-2901, 22-3202. *Meredith v. United States*, 343 A.2d 317, 1975 D.C. App. LEXIS 225 (1975).

— Assault offenses, presumptions and burden of proof.

To prove an attempt to commit the offense of aggravated assault while armed (AAWA), government must prove that accused: (1) intended to commit that particular crime; (2) did some act towards its commission; and (3) and failed to consummate its commission. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

To prove aggravated assault while armed (AAWA), government must prove beyond a reasonable doubt that accused, while armed: (1) by any means, knowingly or purposely caused serious bodily injury to another person, or (2) under circumstances manifesting extreme indifference to human life, that person intentionally or knowingly engaged in conduct which

created a grave risk of serious bodily injury to another person, and thereby caused serious bodily injury. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

To convict defendant of crime of assault on police officer with dangerous weapon, government must prove beyond reasonable doubt each element of offense of simple assault, defendant's knowledge that victim was police officer engaged in performance of official duties, and defendant's use of dangerous weapon during assault. *Parks v. United States*, 627 A.2d 1, 1993 D.C. App. LEXIS 135 (1993).

Government had to prove that defendant knew or had reason to know that victim was police officer to convict defendant of assault on police officer while armed. D.C. Code 1981, §§ 22-505, 22-3202. *Nelson v. United States*, 580 A.2d 114, 1990 D.C. App. LEXIS 244 (1990).

Assault with a dangerous weapon requires proof that the weapon actually was used in assault while malicious disfigurement, with the punishment enhancement element of being armed, requires only proof that the accused was armed or had a dangerous weapon readily available; malicious disfigurement while armed requires proof of specific intent and permanent disfigurement while assault with a dangerous weapon does not require proof of either fact. D.C. Code 1973, §§ 22-401, 22-501, 22-502, 22-506, 22-3202, 22-3502. *Perkins v. United States*, 446 A.2d 19, 1982 D.C. App. LEXIS 363 (1982).

— Homicide offenses, presumptions and burden of proof.

To prove crimes of first-degree premeditated murder and assault with intent to kill on an aiding and abetting theory, there must be evidence from which a reasonable jury can find that defendant was involved in criminal activity to extent that he in some sort associated himself with venture, that he participated in it as in something that he wished to bring about, that he sought by his action to make it succeed. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Testimony by victim at trial is not required to prove specific intent to kill necessary for conviction for assault with intent to kill while armed (AWIKWA), as specific intent may be shown through circumstantial evidence. D.C.

Code 1981, §§ 22-501, 22-3202. *Nixon v. United States*, 730 A.2d 145, 1999 D.C. App. LEXIS 88 (1999), writ of certiorari denied by 528 U.S. 899, 120 S. Ct. 233, 145 L. Ed. 2d 196, 1999 U.S. LEXIS 6211, 68 U.S.L.W. 3230 (1999).

— **Robbery offenses, presumptions and burden of proof.**

Conviction for armed robbery requires showing of taking of property of value while armed from immediate actual possession of another against his will by force or violence or by putting in fear; immediate actual possession refers to area within which victim can reasonably be expected to exercise some physical control over property. D.C. Code 1973, §§ 22-2901, 22-3202. *Head v. United States*, 451 A.2d 615, 1982 D.C. App. LEXIS 437 (1982).

— **Sexual assault offenses, presumptions and burden of proof.**

Definition of “serious bodily injury” appearing in sexual abuse statute was consistent with that followed in majority of jurisdictions, and thus, Court of Appeals would adopt it for purpose of determining whether Government met its burden to prove “serious bodily injury” under aggravated assault statute, which did not define “serious bodily injury.” D.C. Code 1981, §§ 22-504.1, 22-3202, 22-4101(7). *Nixon v. United States*, 730 A.2d 145, 1999 D.C. App. LEXIS 88 (1999), writ of certiorari denied by 528 U.S. 899, 120 S. Ct. 233, 145 L. Ed. 2d 196, 1999 U.S. LEXIS 6211, 68 U.S.L.W. 3230 (1999).

In order to obtain conviction for armed rape, government must prove beyond reasonable doubt that defendant committed rape while armed with or when having readily available any dangerous or deadly weapon. D.C. Code 1981, § 22-3202(a). *Johnson v. United States*, 613 A.2d 888, 1992 D.C. App. LEXIS 213 (1992).

To obtain conviction for assault with intent to commit rape while armed, government must prove beyond reasonable doubt that defendant, while armed, assaulted the victim with specific intent to have sexual intercourse by force and without consent. D.C. Code 1981, §§ 22-501, 22-3202. *Glascoe v. United States*, 514 A.2d 455, 1986 D.C. App. LEXIS 409 (1986).

Purposes and legislative intent.

The primary purpose of statute authorizing imposition of enhanced sentence for a person who commits a crime of violence or a dangerous crime involving a firearm is to authorize imposition of an additional penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon; statute also serve the additional purposes of requiring more severe treatment of recidivists and those who wield firearms, as reflected in the required five-year mandatory-

minimum sentences. *Clyburn v. United States*, 48 A.3d 147, 2012 D.C. App. LEXIS 312 (2012).

District of Columbia’s robbery statute was unambiguously designed to protect persons. D.C. Code 1981, §§ 22-501, 22-2901, 22-3202. *Davis v. United States*, 498 A.2d 242, 1985 D.C. App. LEXIS 490 (1985).

Questions of law and fact.

— **Credibility of witnesses, questions of law and fact.**

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court’s discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. D.C. Code §§ 22-501, 22-502, 22-3202, 22-3204. *United States v. Benn*, 476 F.2d 1127, 1972 U.S. App. LEXIS 6483 (C.A.D.C. 1972).

Defendant’s knowledge and intent with respect to pistol found in car in which he had been riding could not be inferred from the mere fact that he was near it, for purposes of establishing constructive possession of pistol and thereby enhancing penalty on drug charge, where pistol was not in defendant’s plain view. *Cox v. United States*, 999 A.2d 63, 2010 D.C. App. LEXIS 397 (2010).

Trial counsel acted within its discretion in armed robbery prosecution in limiting defense counsel’s inquiry into whether alleged victim was incarcerated during the four years in which he claimed he had been working for a municipal employer; that line of inquiry was a collateral attack on credibility that had no bearing on alleged victim’s credibility or lack thereof as a witness with respect to alleged robbery, and the defense had ample opportunity to cast doubt on his credibility or establish witness bias in its other lines of inquiry. *Kaliku v. United States*, 994 A.2d 765, 2010 D.C. App. LEXIS 261 (2010).

Whether or not witness made truly independent identification of defendant was factually a matter of credibility which was reasonably reserved to jury by trial judge, in prosecution for armed robbery, robbery and assault with a dangerous weapon. D.C. Code §§ 22-502, 22-2901, 22-3202. *Hill v. United States*, 367 A.2d 110, 1976 D.C. App. LEXIS 436 (1976).

Trial court did not abuse its discretion by refusing to strike testimony of witness, that witness had seen defendant with “numerous guns,” in prosecution for first-degree murder while armed, possession of a firearm during a crime of violence and carrying a pistol without a license (CPWL); defense counsel, during cross-examination and closing, made full use of

statement in an attempt to discredit witness, testimony was not admitted to establish criminal propensity, witness was not only person who had seen defendant with guns prior to murder, and comment was not referenced by government during closing argument. *Daniels v. United States*, 2 A.3d 250, 2010 D.C. App. LEXIS 494 (2010), writ of certiorari denied by 131 S. Ct. 806, 178 L. Ed. 2d 538, 2010 U.S. LEXIS 9561, 79 U.S.L.W. 3343 (U.S. 2010).

— In general.

Evidence that defendant was seen entering getaway car, carrying a gun, some ten minutes before robbery, accompanied by one of confessed active perpetrators, that someone drove getaway car, and that defendant was seen with two of active robbers one day later was sufficient to take to jury aiding and abetting case against defendant for entering bank with intent to commit robbery therein, bank robbery, armed robbery, and assault with a dangerous weapon. 18 U.S.C. § 2113(a); D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Parker*, 442 F.2d 779, 1971 U.S. App. LEXIS 11966 (C.A.D.C. 1971).

Whether defendant constructively possessed pistol that was found hidden under front passenger seat of car in which defendant had been riding in back was question for jury for purposes of the “while armed” penalty enhancement on charge of possession with intent to distribute cocaine; orientation of pistol with its handle facing the rear suggested it was the rear-seat passenger who had stowed it under seat, pistol was loaded with same distinctive ammunition that police subsequently discovered in house where defendant had been living, and police drug expert testified that drug dealers in District of Columbia often carried firearms for protection and that quantity of cocaine found on defendant was not consistent with merely personal use. *Cox v. United States*, 999 A.2d 63, 2010 D.C. App. LEXIS 397 (2010).

Jury question as to whether defendants constructively possessed drugs and weapons found in vehicle which was owned by one defendant and to which other defendant had keys was presented by evidence that police stopped car owner and key holder near to each other and to the vehicle containing the contraband, that distinct smell of narcotics was emanating from vehicle, that both defendants were able to exercise dominion and control over the contents of the vehicle, and that defendants made incriminating statements indicating consciousness of guilt. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3202, 22-3204(b), 33-541(a), (a)(1). *Speight v. United States*, 671 A.2d 442, 1996 D.C. App. LEXIS 11 (1996), writ of certiorari denied by 519 U.S. 956, 117 S. Ct. 375, 136 L. Ed. 2d 264, 1996 U.S. LEXIS 6550, 65 U.S.L.W. 3309 (1996).

In prosecution under indictment charging defendant with possession of firearm while committing both armed first-degree burglary and assault with a dangerous weapon, when there was a failure of proof as to first means, trial court properly granted motion for judgment of acquittal as to that portion of that count of indictment and let surviving portion of that count go to the jury, since there was sufficient basis for finding possession of firearm while committing crime of violence based on assault with a dangerous weapon. D.C. Code 1981, § 22-3204(a). *Farmer v. United States*, 616 A.2d 1241, 1992 D.C. App. LEXIS 295 (1992), writ of certiorari denied by 507 U.S. 1056, 113 S. Ct. 1958, 123 L. Ed. 2d 661, 1993 U.S. LEXIS 3098, 61 U.S.L.W. 3731 (1993).

Newly discovered evidence that coperpetrators told victim “You got our shit!” would not have caused acquittal in case in which Government’s principal witness testified that someone said “Where is the shit?” in prosecution for first-degree felony-murder, attempted robbery while armed, and carrying of pistol without license; affiant’s statement did not support claim of right defense and did not taint reliability on witness’ testimony. D.C. Code 1981, §§ 22-2401, 22-2902, 22-3202, 22-3204. *Townsend v. United States*, 549 A.2d 724, 1988 D.C. App. LEXIS 196 (1988), writ of certiorari denied by 490 U.S. 1102, 109 S. Ct. 2457, 104 L. Ed. 2d 1011, 1989 U.S. LEXIS 2732, 57 U.S.L.W. 3792 (1989).

Evidence on question whether victim was permanently disfigured was for jury in prosecution for malicious disfigurement while armed, even though Government offered no evidence of victim’s appearance or physical condition prior to his injury. D.C. Code 1981, §§ 22-506, 22-3202. *Foreman v. United States*, 506 A.2d 1124, 1986 D.C. App. LEXIS 303 (1986).

Jury, which was given broad definitions of concept of malice in prosecution for second-degree murder while armed and assault with a dangerous weapon, was free to apply those concepts on the basis of its own findings of fact. D.C. Code 1981, §§ 22-502, 22-2403, 22-3202. *Powell v. United States*, 485 A.2d 596, 1984 D.C. App. LEXIS 565 (1984), writ of certiorari denied by 474 U.S. 981, 106 S. Ct. 420, 88 L. Ed. 2d 339, 1985 U.S. LEXIS 4406, 54 U.S.L.W. 3328 (1985).

Evidence supported submission to jury of case in which defendants were charged with armed kidnapping, armed rape, armed robbery and carrying pistol without a license. D.C.C.E §§ 22-2101, 22-2801, 22-2901, 22-3202, 22-3204. *Smith v. United States*, 389 A.2d 1356, 1978 D.C. App. LEXIS 399 (1978), writ of certiorari denied by 439 U.S. 1048, 99 S. Ct. 726, 58 L. Ed. 2d 707, 1978 U.S. LEXIS 4242 (1978).

Evidence in prosecution for kidnapping and armed robbery was sufficient to withstand both defendant's motion for acquittal after Government rested and her motion for acquittal after both sides had rested. D.C. Code §§ 22-2101, 22-2901, 22-3202. *Sinclair v. United States*, 388 A.2d 1201, 1978 D.C. App. LEXIS 490 (1978), writ of certiorari denied by 439 U.S. 1118, 99 S. Ct. 1026, 59 L. Ed. 2d 77, 1979 U.S. LEXIS 517 (1979).

In prosecution for rape while armed and sodomy, trial court properly denied motion for acquittal, although identification of defendant by an accomplice was uncorroborated. D.C. Code §§ 22-2801, 22-3202, 22-3502. *Sellman v. United States*, 386 A.2d 303, 1978 D.C. App. LEXIS 514 (1978).

Whether defendant was merely present at scene of burglary and robbery at time of offense, but did not participate in it, was jury question. D.C. Code §§ 22-1801(a), 22-2901, 22-3202. *Franey v. United States*, 382 A.2d 1019, 1978 D.C. App. LEXIS 419 (1978).

— Self-defense, questions of law and fact.

Whether defendant, who armed himself with a pistol following discovery of theft of tape deck from his automobile, who attempted to retrieve deck when companion discovered deck in service station and who shot and seriously wounded service station attendant following argument, had acted in self-defense was for jury. D.C. Code §§ 22-501, 22-3202, 22-3204. *United States v. McCrae*, 459 F.2d 1140, 1972 U.S. App. LEXIS 11221 (C.A.D.C. 1972).

Res judicata and collateral estoppel.

Under principle of collateral estoppel, defendant's acquittal of second-degree murder as lesser included offense of felony-murder barred second prosecution for second-degree murder as lesser included offense of premeditated murder, at least where second trial would involve same issues, and no more, that were presented to jury in first trial, that is, that acts of defendant caused death of victim and that defendant acted with malice and not in heat of passion. D.C. Code 1973, §§ 22-103, 22-2401, 22-2403, 22-3202; U.S. Const. Amend. 5. *Turner v. United States*, 459 A.2d 1054, 1983 D.C. App. LEXIS 355 (1983).

Ruling that original indictment which charged only that defendant "stole" was insufficient because of the failure to allege specific intent to steal was not a decision which went to substance of accusation or defenses to it and thus did not preclude, under doctrine of res judicata, subsequent grand jury indictment in same language, even absent notice of appeal by Government. D.C. Code §§ 22-2901, 22-3202, 23-104(c). *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Dismissal of original armed robbery indictment which charged only that defendant "stole" for failure to charge specific intent to steal was not a final judgment on the merits; thus, doctrine of collateral estoppel did not make dismissal of first indictment conclusive as to sufficiency of second indictment which used identical wording. D.C. Code §§ 22-2901, 22-3202. *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Review.

— Briefs, review.

Court of Appeals would consider defendant's argument that evidence was insufficient to sustain conviction for aggravated assault while armed, though issue was raised for the first time in an appellate reply brief; in case decided after the parties filed their briefs, Court adopted definition of "serious bodily injury," as set forth in the sexual abuse statute, for the purposes of the aggravated assault statute, and the government was not substantially prejudiced, in that it had the opportunity to argue the sufficiency of the evidence and to file a supplemental brief on the subject. D.C. Code 1981, §§ 22-504.1, 22-3202, 22-4101(7). *Gathy v. United States*, 754 A.2d 912, 2000 D.C. App. LEXIS 128 (2000).

— Determination and disposition, review.

Where armed assault was essential part of proof establishing armed rape, armed assault was lesser offense included within the armed rape, and assault conviction was vacated. D.C. Code §§ 22-502, 22-2801, 22-3202(a). *United States v. Edmonds*, 524 F.2d 62, 1975 U.S. App. LEXIS 11658 (C.A.D.C. 1975).

Where the evidentiary failure relating to charge of second-degree burglary while armed with Molotov cocktail concerned only circumstance of defendant being armed, retrial of defendant, mandated on other grounds, could properly include lesser charge of second-degree burglary. D.C. Code §§ 22-3202, 22-3215a. *United States v. Carter*, 522 F.2d 666, 1975 U.S. App. LEXIS 13956 (C.A.D.C. 1975).

Remand was necessary in prosecution for armed aggravated assault with intent to rob, for consideration of whether defense counsel was ineffective in failing to move for mistrial or seek suppression of victim's identification testimony upon receiving victim's grand jury testimony purportedly showing that victim did not initially identify defendant with certainty and that police-sponsored showup procedure was suggestive, where trial court had not considered suppression issue because defense strategy at trial was to present victim as aggressor and defendant as victim, rather than to challenge reliability of identification. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Trial court erred in denying defendant's motion for new trial, following convictions for kidnapping while armed, armed robbery, assault with intent to commit rape while armed, and possession of firearm during crime of violence, which motion was based on newly discovered evidence consisting of handwritten affidavit from alleged participant in crimes, who stated that defendant did not participate, where government conceded its one ground for opposing motion, that is, untimeliness, and trial court's remaining reasons for denying motion without evidentiary hearing were not asserted by government in trial court and were unpersuasive. *Arrington v. United States*, 804 A.2d 1068, 2002 D.C. App. LEXIS 483 (2002).

Remand to trial court of armed premeditated murder case was required in order for it to make findings of fact and to apply Brady standard to defendant's contentions that prosecution failed to disclose that it engaged in suggestive conduct during sole eyewitness's pretrial identification of defendant, that it improperly paid eyewitness on 10 to 20 occasions to appear at prosecution's office, and that a prosecutor loaned eyewitness \$100. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

That prosecution's sole eyewitness was on drugs during the incident and at trial, that eyewitness falsely testified about where he saw the bullets hit the victim, that eyewitness illegally obtained duplicate witness payment vouchers, and that he lied to the trial judge concerning his tardiness at trial, which he claimed resulted from a threat by defendant against his niece, was impeachment evidence not of a nature that acquittal would likely result from its use, and thus, remand to trial court of armed premeditated murder case was not required for findings on defendant's motion for new trial on the alleged newly discovered evidence. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

On remand following reversal of aggravated assault while armed conviction, due to instructional error on element of "serious bodily injury," trial court would be required to enter a judgment of conviction against defendant for lesser-included offense of assault with a dangerous weapon; there was no dispute that defendant used a beer bottle to commit the assault, and there was no other evidence upon which the jury could have rested its finding that defendant committed the assault "while armed." D.C. Code 1981, §§ 22-504.1, 22-3202. *Gathy v. United States*, 754 A.2d 912, 2000 D.C. App. LEXIS 128 (2000).

Although defendant was convicted of first-degree burglary while armed, first-degree bur-

glary, armed robbery, robbery and assault with dangerous weapon, convictions for three lesser offenses of first-degree burglary, robbery and assault with dangerous weapon must be vacated on basis that they were lesser included offenses of first-degree burglary while armed and armed robbery. D.C. Code §§ 22-502, 22-1801(a), 22-2901, 22-3202. *Franey v. United States*, 382 A.2d 1019, 1978 D.C. App. LEXIS 419 (1978).

— In general.

Dismissal of charge of assault with intent to kill while armed (AWIKWA) against defendant without prejudice approximately seven weeks after Court of Appeals issued order summarily reversing defendant's preventive detention and stating that opinion would follow did not render appeal moot, where, at time of Court's ruling, defendant was in detention, present opinion set forth legal basis for that ruling, and issue was capable of repetition but evaded review. D.C. Code 1981, §§ 22-503, 22-3202, 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

— Parole and probation, review.

A remand was necessary to determine whether the district court denied probation on ground that the Federal Probation Act, forbidding probation in the case of an offense punishable by death or life imprisonment, applied to a conviction in the district court solely of an offense under the District of Columbia Code, or on ground that, by reference to the terms of the Code under which probation was sentencing option available, it was within its discretion under all the circumstances to deny probation. 18 U.S.C. § 2255; 18 U.S.C. § 3651; D.C. Code 1973, §§ 11-502(3), 22-2901, 22-3202; 26 U.S.C. § 5861(d). *United States v. Garnett*, 653 F.2d 558, 1981 U.S. App. LEXIS 14304 (C.A.D.C. 1981).

Petitioner seeking postconviction relief was entitled to an evidentiary hearing to determine if counsel rendered ineffective assistance by providing materially incorrect information regarding when petitioner would be eligible for parole if he pleaded guilty to manslaughter while armed. *Goodall v. United States*, 759 A.2d 1077, 2000 D.C. App. LEXIS 273 (2000).

— Plain error, review.

Plain error of trial court by including in aiding and abetting instruction "natural and probable consequences" language that allowed jury to convict defendants of first-degree murder while armed without finding the necessary mens rea for first-degree murder, in trial of five defendants arising out of beating of homeless man and murder of passerby who tried to intervene, resulted in a miscarriage of justice such that the plain error rule required convictions of defendants for first-degree murder

while armed be reversed and convictions instead be entered for second-degree murder while armed; defendants were tried as aiders and abettors, the principals who committed the murder were not codefendants, there was no compelling evidence that the defendants personally had the intent to kill and acted with premeditation and deliberation in doing so, but there was evidence that defendants acted with malice, as required to support conviction for second-degree murder. *Perez v. United States*, 968 A.2d 39, 2009 D.C. App. LEXIS 57 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 474, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7527, 78 U.S.L.W. 3237 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 473, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7505, 78 U.S.L.W. 3237 (2009).

Error in trial court's inclusion of "natural and probable consequences" language in jury instruction on aiding and abetting was not plain error with respect to conviction for assault with intent to commit robbery while armed (AWIRWA) as aider and abettor; given evidence and jury's findings that defendant was guilty of related other offenses, there was little likelihood that jury found defendant guilty of AWIRWA without finding that he had the requisite mens rea, and, moreover, defendant was not precluded from presenting his case to jury. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

— Presentation and reservation of grounds for review.

Contention that it was improper for defendant to be convicted and sentenced on both counts I which charged under federal mail robbery statute with assaulting post office custodian with intent to rob him, and count II under District of Columbia robbery and crime of violence statute with robbing the custodian because the assault charged in count I "merged" with completed robbery charged in count II would be considered by Court of Appeals even though issue was not raised in trial court. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3201, 22-3202. *United States v. Spears*, 449 F.2d 946, 1971 U.S. App. LEXIS 11849 (C.A.D.C. 1971).

The appellate court was not required to decide whether statute creating mandatory-minimum sentence for persons convicted of crimes of violence while armed with pistol or firearm required proof that pistol was "operable"; defendants had either conceded or waived operability issue. D.C. Code 1981, § 22-3202(a)(1). *Abrams v. United States*, 531 A.2d 964, 1987 D.C. App. LEXIS 446 (1987).

Defendant, who specifically objected to first two prosecution witnesses on ground that each witness could not remember anything, preserved for review issue that prosecutor should

not have called both witnesses in prosecution for armed robbery, assault with intent to kill while armed, assault with dangerous weapon, assault with intent to commit robbery while armed, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

— Scope of review.

Defendant, convicted of aggravated assault while armed, was estopped from questioning the sufficiency of the evidence of the complainant's injuries to constitute "serious bodily injury" on appeal, where defense counsel conceded that issue during closing argument at trial. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

Question of whether, in an assault with intent to kill while armed (AWIKWA) case, a preventive detention order could rest solely on a probable cause finding plus circumstances of the charged crime was principally one of law, and Court of Appeals would review de novo the trial judge's disposition of it. D.C. Code 1981, §§ 22-503, 22-3202, 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Reviewing court had to determine whether trial court's error in denying defendant charged with assault with intent to murder while armed the right to call witnesses on provocation/mitigation was constitutional error requiring reversal unless government showed it was harmless beyond reasonable doubt under Chapman, or nonconstitutional error subject to reversal under Kotteakos, which requires reversal unless court could say with fair assurance in light of all circumstances that judgment was not swayed by the error. *Howard v. United States*, 656 A.2d 1106, 1995 D.C. App. LEXIS 29 (1995).

While curative instructions are of minimal worth in face of seriously prejudicial evidence, reviewing court will nonetheless consider whether curative instruction was available that might have mitigated alleged harm to defendant's case, where defendant asserts that certain testimony is so prejudicial as to require mistrial, yet refuses any curative instruction. *Clark v. United States*, 639 A.2d 76, 1993 D.C. App. LEXIS 277 (1993).

In deciding whether trial court has abused its discretion in excluding defense evidence on basis of previous defense objection to its introduction, reviewing court will consider whether proffered evidence was identical to evidence previously objected to; whether defense was given option of having evidence admitted after initial objection; how late in trial defense changed its position; whether new circumstances justified change or whether change was due only to shift in trial strategy; whether defense counsel had sufficient opportunity to

examine witnesses on point for which admission of excluded evidence was sought; whether comparable evidence was introduced by other means; relevance of proffered evidence and its probative value; degree of prejudice to defendant posed by either admission or exclusion; and potential for prejudice to government. *U.S. Const. Amend. 6. Clark v. United States*, 639 A.2d 76, 1993 D.C. App. LEXIS 277 (1993).

In absence of attempt by the government or the court to impose sentence or order probation for defendant, who, following plea of guilty to simple assault, was granted suspended imposition of sentence without a subsequent entrance of a formal judgment of conviction, question whether the government or court could do so was not appropriate for resolution. *Clayton v. United States*, 429 A.2d 1381, 1981 D.C. App. LEXIS 269 (1981).

— Sentence and punishment, review.

Where concurrent sentences imposed on each conviction for assault with a dangerous weapon were adjudged to run concurrently with burglary and armed robbery convictions, no remand for resentencing was necessary on vacation of convictions for assault with a dangerous weapon. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Kearney*, 498 F.2d 61, 1974 U.S. App. LEXIS 8584 (C.A.D.C. 1974).

In view of concurrent sentences imposed upon convictions for assault with intent to kill while armed and assault with a dangerous weapon, the mildness of the punishment adjudged, the trial judge's recommendation for psychiatric treatment and the necessity for conserving judicial resources, the Court of Appeals would not reach question as to whether the crime of assault with dangerous weapon merged into crime of assault with intent to kill while armed with a dangerous weapon, but would vacate the convictions on the four counts which charged assault with a dangerous weapon. D.C. Code §§ 22-501, 22-502, 22-3202. *United States v. Hill*, 470 F.2d 361, 1972 U.S. App. LEXIS 8107 (C.A.D.C. 1972).

Conviction of juvenile of first-degree felony-murder, armed robbery, assault with dangerous weapon, assault upon police officer with dangerous weapon and carrying dangerous weapon would be remanded to district court to consider possibility of sentencing under Youth Corrections Act. D.C. Code §§ 22-502, 22-505(b), 22-2401, 22-3202, 22-3204; 18 U.S.C. § 5005 et seq. *United States v. Howard*, 449 F.2d 1086, 1971 U.S. App. LEXIS 9212 (C.A.D.C. 1971).

Court of Appeals would consider claim that it was improper for defendant to be convicted and sentenced on both counts I which charged under federal mail robbery statute the assault of post office custodian with intent to rob him, and count II which charged under District of Columbia statutes the robbing of custodian, not-

withstanding fact that defendant received concurrent sentences, because of possible harmful effect on defendant of myriad collateral consequences of an improper double felony conviction and desirability of having such issue settled. 18 U.S.C. § 2114; D.C. Code §§ 22-2901, 22-3201, 22-3202. *United States v. Howard*, 449 F.2d 1086, 1971 U.S. App. LEXIS 9212 (C.A.D.C. 1971).

Reduction of convictions to assault with dangerous weapon, rather than dismissal, would be appropriate remedy for failure to prove assault with intent to commit robbery of two victims as charged in indictment, despite constructive amendment to indictment. D.C. Code 1981, §§ 22-501, 22-502, 22-3202. *Long v. United States*, 687 A.2d 1331, 1996 D.C. App. LEXIS 234 (1996).

Court of Appeals will not review on appeal sentences which are within statutory limits, upon ground that sentences are too severe. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Given trial court's broad sentencing discretion and interest in finality, Court of Appeals, in absence of legislative direction, does not review excessiveness of sentences, although sentencing process is subject to appellate scrutiny for abuse. *Johnson v. United States*, 628 A.2d 1009, 1993 D.C. App. LEXIS 177 (1993).

Claimed error in imposing consecutive sentences for robbery and felony-murder and in imposing additional consecutive sentences was rendered moot by resentencing during pendency of appeal. D.C. Code 1973, §§ 22-2401, 22-2901, 22-3202, 22-3202(a)(2). *Turner v. United States*, 443 A.2d 542, 1982 D.C. App. LEXIS 307 (1982).

Where sentence was within statutory maximum, it was not subject to appellate review. *Lagon v. United States*, 442 A.2d 166, 1982 D.C. App. LEXIS 300 (1982).

On appeal from criminal conviction, the Court of Appeals may decide only whether the sentence imposed was legally permissible and once the court has determined that the sentence was permitted by law, the severity of the sentence may not be questioned. *Jones v. United States*, 401 A.2d 473, 1979 D.C. App. LEXIS 351 (1979).

Where trial court proceeded under the wrong statute, which provided a five-year mandatory minimum sentence for a second conviction of a crime of violence while armed when in fact defendant's previous convictions were not for crimes of violence while armed, in sentencing defendant to eight to 30 years for armed robbery with consecutive sentences for other of-

fenses, thereby curtailing its independent sentencing discretion, it was necessary to remand for resentencing, even though sentence of the length imposed could have been imposed under the correct statute. D.C. Code § 22-3202(a)(1, 2). *Fields v. United States*, 396 A.2d 990, 1979 D.C. App. LEXIS 286 (1979), US Supreme Court certiorari denied by 464 U.S. 998, 104 S. Ct. 497, 78 L. Ed. 2d 690, 1983 U.S. LEXIS 2545, 52 U.S.L.W. 3422 (1983).

In view of statute providing that when there is life sentence, minimum may not exceed 15 years, sentences of 20 years to life imposed on conviction of armed robbery were improper and cases would be remanded for resentencing of defendant. D.C. Code § 22-3202(b). *Goins v. United States*, 353 A.2d 298, 1976 D.C. App. LEXIS 490 (1976).

Searches and seizures.

Where defendant's car fitted description given by accomplice and another witness and was found in vicinity of defendant who met description given by the accomplice, and where defendant voluntarily surrendered his keys to police and they fitted car, tying car to evidence of its use, there was probable cause for seizure of the car, and police could either seize and hold car or make immediate warrantless search, and where it was difficult to make detailed search of car where it was found, subsequent search at station house, 24 hours later, was reasonable; police had duty to act as quickly as possible to obtain evidence that might exonerate or incriminate, and there were thus exigent circumstances. D.C. Code §§ 22-2901, 22-3202. *United States v. Lee*, 509 F.2d 400, 1974 U.S. App. LEXIS 5476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 1006, 95 S. Ct. 1451, 43 L. Ed. 2d 765, 1975 U.S. LEXIS 1180 (1975).

Exigency existed justifying police officers breaking into residence using battering ram only five seconds after they knocked and announced that they were police officers executing search warrant, where police officers arrived at residence knowing that defendant was suspected of committing as many as 12 robberies using Uzi-type weapon, that defendant had used weapon to take human shield to insure safe escape after committing latest robbery, that Uzi had been seen on premises within past 24 hours, and officers' knock and announcement of their authority and purpose was met with silence even though they had seen lights and heard voices inside home. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b), 23-524, 23-524(a), 33-565(g); U.S. Const.Amend. 4; 18 U.S.C. § 3109. *Culp v. United States*, 624 A.2d 460, 1993 D.C. App. LEXIS 114 (1993).

Test for whether exigent circumstances existed justifying officers breaking into residence only five seconds after they knocked and announced their authority and purpose is how

reasonable and experienced officer would respond under same circumstances. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b), 23-524, 23-524(a), 33-565(g); U.S. Const.Amend. 4; 18 U.S.C. § 3109. *Culp v. United States*, 624 A.2d 460, 1993 D.C. App. LEXIS 114 (1993).

Sentence and punishment.

— Crimes of violence.

Armed robbery and assault with intent to commit robbery while armed were armed "crimes of violence" within statute prescribing mandatory minimum sentence for such crimes. D.C. Code §§ 22-3201, 33-3202, 22-3202(a)(2). *United States v. Hilliard*, 366 A.2d 437, 1976 D.C. App. LEXIS 413 (1976).

— Homicide offenses, sentence and punishment.

Imposition of separate, additional sentence of ten years to life for committing voluntary manslaughter while armed was appropriate; crime of violence triggered applicability of enhancement provision, manslaughter was a "crime of violence," and enhancement did not merge with sentence of ten to 30 years that defendant received for manslaughter. *Hager v. United States*, 791 A.2d 911, 2002 D.C. App. LEXIS 40 (2002), writ of certiorari denied by 543 U.S. 846, 125 S. Ct. 290, 160 L. Ed. 2d 74, 2004 U.S. LEXIS 6032, 73 U.S.L.W. 3208 (2004).

Sentences of six and two-thirds to 20 years' imprisonment for each of defendant's two convictions as accessory after the fact to assault with intent to kill while armed were permissible; maximum penalty for underlying crime was life imprisonment, and defendant's maximum potential sentence on each count of 20 years' imprisonment was less than 45-year term which has been imposed in other cases in which life imprisonment was possible, and thus was necessarily less than half of maximum sentence to which principal may be sentenced. D.C. Code 1981, §§ 22-106, 22-501, 22-3202. *Heard v. United States*, 686 A.2d 1026, 1996 D.C. App. LEXIS 274 (1996).

Aggravating factor for sentencing purposes, that murder was especially heinous, atrocious, or cruel, existed in prosecution for first-degree murder while armed; medical testimony established that victim suffered numerous bruises, abrasions, scrapes, and stab wounds to her back, victim was attempting to avoid attack, victim's throat was cut deeply while she was alive, and victim was strangled so as to result in death. D.C. Code 1981, §§ 22-2401, 22-2404.1(b)(4), (c), 22-3202. *Henderson v. United States*, 678 A.2d 20, 1996 D.C. App. LEXIS 107 (1996).

Aggravating factor for sentencing purposes, that 78-year-old victim was especially vulnerable due to her age, existed in prosecution for first-degree murder while armed, despite fact

that victim was in excellent physical condition for woman of 78 years of age; at time of incident, defendant was 37-year-old man in good health who could easily overcome will of 78-year-old woman, and evidence suggested that defendant easily overcame victim's will. D.C. Code 1981, §§ 22-2401, 22-2404.1(b)(10), (c), 22-3202. *Henderson v. United States*, 678 A.2d 20, 1996 D.C. App. LEXIS 107 (1996).

Defendant was permissibly sentenced to life imprisonment without possibility of parole for first-degree murder while armed; aggravating circumstances, that murder was especially heinous, atrocious, or cruel and that 78-year-old victim was especially vulnerable due to her age, existed, crime involved violation of trust and extreme disregard for human life, and motive for killing was so defendant could avoid returning to jail because victim had seen defendant's face. D.C. Code 1981, §§ 22-2401, 22-2404.1(b)(4), (10), (c), 22-3202. *Henderson v. United States*, 678 A.2d 20, 1996 D.C. App. LEXIS 107 (1996).

Even if sentencing judge had intended to impose sentence of 5 to 15 months on defendant convicted on three counts of assault with intent to kill while armed, as stated in oral pronouncement of sentence, he would have been required to correct sentence, as mandatory minimum sentence for offense was imprisonment for five years. D.C. Code 1981, §§ 22-501, 22-3202; Criminal Rule 35. *Gray v. United States*, 585 A.2d 164, 1991 D.C. App. LEXIS 12 (1991).

Where course of action taken by defendant in taking part in burglary and attempted armed robbery during which a murder occurred violated two separate felony-murder statutes, which required proof of different elements for conviction, imposition of two concurrent sentences was permissible for one murder. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202. *Adams v. United States*, 466 A.2d 439, 1983 D.C. App. LEXIS 483 (1983).

— Juvenile offenders, sentence and punishment.

Under statute precluding sentencing accused under Youth Corrections Act if he is convicted more than once of having committed crimes of violence, conviction occurring before effective date of statute is included. D.C. Code § 22-3202(a)(2), (d)(1). *United States v. Thomas*, 485 F.2d 1012, 1973 U.S. App. LEXIS 8265 (C.A.D.C. 1973).

Defendant who was convicted of armed robbery and sentenced under Youth Corrections Act, before effective date of statute precluding sentencing under the Act of any person who is convicted more than once of having committed a crime of violence in District of Columbia, and who was convicted thereafter of armed robbery and assault with a dangerous weapon was not entitled to be sentenced under the Youth Cor-

rections Act, although he was 20 years old at time of second conviction. 18 U.S.C. §§ 751(a), 5005 et seq.; D.C. Code § 22-3202(a)(2), (d)(1); District of Columbia Court Reform and Criminal Procedure Act of 1970, §§ 901, 901(b)(3), 84 Stat. 473. *United States v. Thomas*, 485 F.2d 1012, 1973 U.S. App. LEXIS 8265 (C.A.D.C. 1973).

Where youth was found guilty of unlawful entry, an offense punishable by fine or imprisonment in jail for not more than six months, he was subject to sentence under District of Columbia Code or under Youth Corrections Act, and was properly sentenced under latter, which authorizes sentence thereunder on conviction of offense punishable by imprisonment, despite youth's service of seven months' presentence jail time for which he claimed credit under statute. D.C. Code §§ 22-1801(b), 22-3102, 22-3201, 22-3202, 22-3202(d)(1); 18 U.S.C. §§ 3568, 5010(b), 5017(c), 5021, 5024. *United States v. Lewis*, 447 F.2d 1262, 1971 U.S. App. LEXIS 8961 (C.A.D.C. 1971).

Twenty-year-old defendant, who had been convicted of first-degree felony-murder, as well as attempted robbery while armed and carrying a dangerous weapon, in violation of District of Columbia law, was ineligible to receive an indeterminate adult sentence pursuant to statute governing fixing of eligibility for parole at time of sentencing, as recommended in report prepared in accordance with Federal Youth Corrections Act. D.C. Code §§ 22-2401, 22-2404, 22-3202, 22-3204; Fed. Rules Crim. Proc. rule 35, 18 U.S.C.; 18 U.S.C. §§ 4208(a)(2), 5010(e). *United States v. Tillman*, 374 F. Supp. 215, 1974 U.S. Dist. LEXIS 9524 (1974).

Trial court met requirements of Youth Rehabilitation Act by weighing and rejecting option of sentencing defendant under Act, for voluntary manslaughter, assault, and weapon convictions. D.C. Code 1981, §§ 22-502, 22-2405, 22-3202, 22-3204, 24-801 et seq. *Edwards v. United States*, 721 A.2d 938, 1998 D.C. App. LEXIS 223 (1998).

Trial court's clearly stated reasons for not sentencing juvenile defendant to Federal Youth Corrections Act sentence, which included specific finding that defendant would not benefit from programs available under Act, constituted rational determination that defendant would not derive rehabilitative benefit from Act, and satisfied its requirements. D.C. Code §§ 22-2901, 22-3202; 18 U.S.C. §§ 5005 et seq., 5010(e). *Lawrence v. United States*, 318 A.2d 890, 1974 D.C. App. LEXIS 401 (1974).

— Weight and sufficiency of evidence, sentence and punishment.

Evidence was insufficient to establish that assault rifle was "readily available" to defendant while he committed underlying offense of possession with intent to distribute (PWID),

thus precluding imposition of enhanced sentence under statute governing crimes of violence or dangerous crimes involving firearms; the assault rifle was located in the bedroom beyond the living room where drug money was located and beyond the dining and hallway area, and no evidence was introduced specifying the distance between the living room and the bedroom, or the ease of the path from the living room to the bedroom and the assault rifle. *Clyburn v. United States*, 48 A.3d 147, 2012 D.C. App. LEXIS 312 (2012).

Evidence was sufficient to support an imposition of a "while armed" enhancement to the penalty for possession of a controlled substance with intent to distribute; defendant possessed an eight-and-three-quarter-inch folding knife with a four-inch blade, and the knife was clipped to his waistband, under his control and ready to be used. *Doreus v. United States*, 964 A.2d 154, 2009 D.C. App. LEXIS 9 (2009).

Speedy trial rights.

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. U.S. Const. Amend. 6; D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Parish*, 468 F.2d 1129, 1972 U.S. App. LEXIS 7437 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 957, 93 S. Ct. 1430, 35 L. Ed. 2d 690, 1973 U.S. LEXIS 3259 (1973).

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. U.S. Const. Amends. 5, 6; D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Parish*, 468 F.2d 1129, 1972 U.S. App. LEXIS 7437 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 957, 93 S. Ct. 1430, 35 L. Ed. 2d 690, 1973 U.S. LEXIS 3259 (1973).

On record, defendant suffered no prejudice as result of pretrial delay in presenting coherent and comprehensive alibi defense, and accused

was not denied his Sixth Amendment right to speedy trial by 17-month delay between first arrest and trial on charges of armed robbery and felony-murder. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202; U.S. Const. Amend. 6. *Tribble v. United States*, 447 A.2d 766, 1982 D.C. App. LEXIS 380 (1982).

Defendant's allegation that 14-month prearrest delay enabled a minor witness to become a competent witness in criminal prosecution was insufficient to support a due process claim in that it was based on pure speculation, 14-month delay could easily have worked to defendant's advantage by causing child's memory to fade, and defendant made no claim that presentation of his own evidence was in any way impaired. D.C. Code §§ 22-2403, 22-3202, 22-3203; U.S. Const. Amend. 5. *Smith v. United States*, 414 A.2d 1189, 1980 D.C. App. LEXIS 290 (1980).

While defendant, who was incarcerated less than two weeks following his arrest and who was free on bond for pendency of entire proceedings, may have suffered some anxiety and impairment of memory as a result of 17-month period between his arrest and trial, which delay was not due to any bad faith on part of Government, that prejudice, when considered in overall context of case, was not sufficiently serious to warrant dismissal of second-degree murder while armed charge against defendant. D.C. Code §§ 22-2403, 22-3202; U.S. Const. Amends. 6, 14. *Campbell v. United States*, 391 A.2d 283, 1978 D.C. App. LEXIS 566 (1978).

Defendant was not denied his right to speedy trial as result of 17-month delay between arrest and trial on second-degree murder while armed charge, one month of which was due to continuance sought by Government which was unopposed by defendant, and 16 months of which resulted from administrative delay, taking of an interlocutory appeal and development of expert ballistics testimony, where defendant did not assert his right to speedy trial until almost 16 months after his arrest and defendant did not suffer prejudice sufficiently serious to warrant dismissal of charge against him. D.C. Code §§ 22-2403, 22-3202; U.S. Const. Amends. 6, 14. *Campbell v. United States*, 391 A.2d 283, 1978 D.C. App. LEXIS 566 (1978).

Validity.

Statute withholding benefits of Youth Corrections Act from those twice convicted of armed crimes of violence is not unreasonable and did not deny youth twice convicted of crimes of violence equal protection of laws. D.C. Code § 22-3202. *United States v. Thomas*, 485 F.2d 1012, 1973 U.S. App. LEXIS 8265 (C.A.D.C. 1973).

Verdict and findings of fact.

Assault with dangerous weapon was lesser included offense of principal offense of armed

robbery; accordingly, defendant could not be convicted of lesser offense in addition to greater. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Inge*, 494 F.2d 1102, 1974 U.S. App. LEXIS 9695 (C.A.D.C. 1974).

Where jury returned a verdict of guilty on each of four counts of robbery while armed involving different victims it was error to receive verdicts from the jury on the four counts of assault with a dangerous weapon, a lesser included offense, with respect to the same victims. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Johnson*, 475 F.2d 1297, 1973 U.S. App. LEXIS 11465 (C.A.D.C. 1973).

Where first jury returned verdict of not guilty of armed robbery but was unable to agree as to whether defendant was an unarmed robber and mistrial was declared, the acquittal of armed robbery was not an acquittal of unarmed robbery charge and double jeopardy prohibition did not preclude retrial of unarmed robbery charge. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Scott*, 464 F.2d 832, 1972 U.S. App. LEXIS 8719 (C.A.D.C. 1972).

Juvenile court was authorized to find juvenile defendant guilty of assault with intent to rob, as lesser included offense of armed robbery for which he was charged; such a finding was not, and could not have been, dependent on defense request that "instruction" on lesser included offense be given, given absence of juries at juvenile proceedings. D.C. Code 1981, §§ 22-501, 22-2901, 22-3202; Juvenile Rule 31(c). *In re T.H.B.*, 670 A.2d 895, 1996 D.C. App. LEXIS 6 (1996).

Medical examiner's testimony that death was caused either by shotgun or by strangulation did not allow jury verdict that was not unanimous; in view of verdict finding defendant guilty of manslaughter while armed, and defendant's concession that he shot victim, there was no possibility that some members of jury would have found that defendant had strangled victim without also agreeing that he had shot victim. D.C. Code 1981, §§ 22-2405, 22-3202. *Smith v. United States*, 554 A.2d 1155, 1989 D.C. App. LEXIS 33 (1989).

Defendant's contention that jury's verdict of acquittal on kidnapping count meant jury found that victim had consented to her presence in bedroom was based on speculation in prosecution for assault with intent to commit rape while armed, and evidence was sufficient to support jury conclusion that victim did not consent to being in bedroom with defendant. D.C. Code 1981, §§ 22-501, 22-3202. *Glascow v. United States*, 514 A.2d 455, 1986 D.C. App. LEXIS 409 (1986).

Trial court which individually polled jurors as to whether they agreed with announced guilty verdict as to last eight counts was not required to individually poll each juror with respect to agreement to each count and did not

abuse discretion in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

In proceeding in which defendant was convicted of armed robbery, it had been within province of jurors to resolve inconsistencies with respect to victim's identification of defendant; no manifest error or serious injustice was shown in regard to sufficiency of Government's evidence of identity. D.C. Code §§ 22-2901, 22-3202. *Fitzhugh v. United States*, 415 A.2d 548, 1980 D.C. App. LEXIS 304 (1980).

In prosecution for crimes including two counts of first-degree murder while armed, no reversible error arose from use of verdict form which, according to defendant, was misleading in that it encouraged the jury to find defendant guilty of the first count so that the jurors would not have to consider the remaining lesser offenses listed. D.C. Code §§ 22-401, 22-2401 to 22-3202. *Hallman v. United States*, 410 A.2d 215, 1979 D.C. App. LEXIS 539 (1979).

Where foreman requested to approach bench when asked whether jury had reached verdict with respect to armed robbery charge, court denied request, foreman then announced that jury had reached guilty verdict, jury poll yielded unanimous verdicts, and no objection was raised, denial of jury foreman's request to approach bench did not constitute plain error. D.C. Code SCR, Criminal Rules 30, 52(b); D.C. Code §§ 22-2901, 22-3202. *Johnson v. United States*, 360 A.2d 502, 1976 D.C. App. LEXIS 319 (1976).

Trial court's use of special verdict form did not confuse jury or prejudice defendant, in prosecution for first-degree burglary, murder, and assault with intent to commit rape while armed. D.C. Code §§ 22-501, 22-1801(a), 22-2403, 22-3202. *Harman v. United States*, 351 A.2d 504, 1976 D.C. App. LEXIS 468 (1976), writ of certiorari denied by 429 U.S. 841, 97 S. Ct. 116, 50 L. Ed. 2d 110, 1976 U.S. LEXIS 2668 (1976).

Weight and sufficiency of evidence.

— Assault offenses generally, weight and sufficiency of evidence.

Evidence was insufficient to support finding that victim faced a substantial risk of death, or suffered from either protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member as a result of the stabbing wound he received from defendant, for purposes of "serious bodily injury" element of aggravated assault while armed (AAWA); though victim testified that defendant stabbed him in his arm and cut his wrist,

medical records described the upper arm wound as “without complication” and the wrist wound as “superficial,” requiring only stitches, and the record was void of any evidence of the medical, consequential or lasting effects of the wounds inflicted on victim. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

Evidence was insufficient to support finding that victim suffered a “serious bodily injury,” an element of aggravated assault while armed (AAWA), under the pre-Nixon instruction given to the jury; victim’s medical records stated that he had an “uneventful transport” to the hospital with no loss of consciousness, wounds to the chest and shoulder were small and round, and the government failed to produce any expert testimony as to the life-threatening nature of the injuries. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

Evidence was insufficient to support findings that two victims suffered extreme physical pain, for purposes of “serious bodily injury” element of aggravated assault while armed (AAWA); neither victim testified as to how much pain, if any, he felt, and although at trial detective testified that all the victims were in pain and that each was given pain medication, this evidence was not enough to satisfy the showing of extreme pain that the statute required. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

Evidence supported finding that victim suffered extreme physical pain from the multiple stab wounds he received, sufficient to satisfy the threshold required for a conviction of aggravated assault while armed (AAWA); victim testified that he told an officer that he was in pain and that he could not breathe, he also testified that his muscles hurt, his chest was in pain, and he kept thinking that he was going to die, and his medical records indicated that, upon his arrival at the hospital, victim complained of shortness of breath related to pain. *Bolanos v. United States*, 938 A.2d 672, 2007 D.C. App. LEXIS 700 (2007), writ of certiorari denied by 553 U.S. 1072, 128 S. Ct. 2517, 171 L. Ed. 2d 799, 2008 U.S. LEXIS 4463, 76 U.S.L.W. 3629 (2008).

Sufficient evidence supported defendant’s conviction for attempted aggravated assault while armed (attempted AAWA); victim testified that defendant drove his van at her vehicle and forced her onto shoulder of road, and according to victim, defendant actually threat-

ened to “ram” her, beat her and kill her, and thus, jury could conclude reasonably that it was likely that victim would have sustained serious bodily injuries if she had not successfully avoided collision while fleeing from defendant, who had threatened her life and was, by his action, attempting to cause her to have accident. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

Evidence was sufficient to support conviction for aggravated assault while armed; issue of who was the first aggressor came down to a credibility contest between complainant and defendant, and even if the jury had believed that the complainant attacked defendant first, the evidence of the injuries suffered by the complainant from stabbing, coupled with the fact that defendant suffered none of consequence, permitted the jury to find that defendant forfeited her right of self-defense by using excessive force. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

Sufficient evidence supported conclusion that victim suffered “serious bodily injury,” as necessary to sustain conviction for aggravated assault while armed; victim was stabbed multiple times on both arms and in the vagina, wounds resulted in a four-day hospitalization, and a total of 72 stitches, and victim testified that the wounds caused her a great deal of ongoing pain. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

Evidence was insufficient, in prosecution for armed aggravated assault arising from incident in which shotgun carried by defendant fired and shot victim through the palm after victim shoved gun with his hand, to support a finding that defendant knowingly or purposefully caused serious bodily injury; evidence was entirely consistent with an argument that gun discharged accidentally when victim struck it in attempt to divert it from himself. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Finding of intent to rob was supported, in prosecution for assault with intent to rob while armed, by evidence that defendant told victim, “Do you think I’m fucking joking? Empty your pockets,” and was not negated by fact that when victim held out the money, defendant did not immediately take it but kept on speaking. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Reasonable jurors could find beyond a reasonable doubt that defendant attempted to assault victim because he fired a shot at close range, and thus, evidence was sufficient to show that defendant acted with the specific intent to kill so as to support his conviction for assault with the intent to kill while armed; simply by firing in victim’s direction, defendant put victim in a “zone of harm.” *Di Giovanni v.*

United States, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

Evidence established that defendant, at a minimum, aided and abetted the assault with intent to kill while armed and the aggravated assault while armed; victim testified that defendant retrieved the knife that was used against her, that he alternately beat and "stomped" on her, and that he held her arms while the other assailants brutally attacked her, and defendant was smeared with blood when he was arrested. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Evidence supported conviction for assault with intent to kill while armed; victim described how defendant and co-defendant, both of whom she knew, physically assaulted her, she clearly identified defendant as the assailant who picked up a wooden rod and began to stab and jab her head and hands, officer identified defendant as person he saw approaching victim, holding a piece of glass in his left hand and attempting to grab her with the other, officer heard defendant say "You're gonna die" on two separate occasions, and defendant's shirt, pants, shoes, and hands had numerous blood stains. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Evidence that defendant maliciously beat and burned the victim, leaving a permanent scar on her leg from a clothes iron, because in working for him as a prostitute she had failed to turn over an indeterminate sum of money, supported conviction for malicious disfigurement while armed. *Hudson v. United States*, 790 A.2d 531, 2002 D.C. App. LEXIS 8 (2002).

Evidence that defendant maliciously beat and burned the victim, leaving a permanent scar on her leg from a clothes iron, because in working for him as a prostitute she had failed to turn over an indeterminate sum of money, supported conviction for aggravated assault while armed. *Hudson v. United States*, 790 A.2d 531, 2002 D.C. App. LEXIS 8 (2002).

Evidence was sufficient to establish identity, and thus, was sufficient to support convictions for aggravated assault while armed and assault with a dangerous weapon, where eyewitness who identified defendant observed the entire altercation, the gymnasium where the fight occurred was adequately lit, and eyewitness was no more than 30 feet from the incident, which was close enough to see a small, sharp object in defendant's hand and to observe defendant's face. *Martin v. United States*, 756 A.2d 901, 2000 D.C. App. LEXIS 172 (2000).

Evidence was sufficient to show that the injury to victim, after being struck with a beer bottle by defendant, involved a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of

a bodily member, organ, or mental faculty, as required to establish "serious bodily injury" element of aggravated assault while armed, where victim testified that he was "semi-unconscious," "in total shock," and "not totally coherent" after the assault, photographs revealed deep cuts around victim's nose and left eye, and medical records established that victim's "repair level" was "intermediate," and that the 48 stitches he received were "layered." D.C. Code 1981, §§ 22-504.1, 22-3202. *Gathy v. United States*, 754 A.2d 912, 2000 D.C. App. LEXIS 128 (2000).

Evidence did not establish that two shooting victims suffered serious bodily injury, as was required for convictions for aggravated assault while armed (AAWA); although witness stated that he saw two holes on first victim's body, including hole behind victim's ear with blood coming out, and that second victim grabbed his shoulder and there was blood on back of his shirt "like he got hit in the back of his neck or his shoulder," there was no testimony from victims, health professionals who treated them, or medical records detailing nature and extent of their injuries. D.C. Code 1981, §§ 22-504.1, 22-3202, 22-4101(7). *Nixon v. United States*, 730 A.2d 145, 1999 D.C. App. LEXIS 88 (1999), writ of certiorari denied by 528 U.S. 899, 120 S. Ct. 233, 145 L. Ed. 2d 196, 1999 U.S. LEXIS 6211, 68 U.S.L.W. 3230 (1999).

— Burglary offenses, weight and sufficiency of evidence.

Evidence was sufficient to support defendant's convictions for first-degree murder while armed, assault with intent to kill while armed, armed robbery, conspiracy to commit armed robbery, and first-degree burglary while armed; according to driver of get-away vehicle, defendant struggled to open stolen safe in vehicle following murders and made statement about apparent contents of safe, and other witnesses testified that defendant ran to vehicle from victims' house with codefendant, that defendant helped count out money, drugs, and other items found in safe, and that defendant ultimately took his own share, including a diamond ring which he was seen wearing shortly after the murders. D.C. Code 1981, §§ 22-105(a), 22-501, 22-1801(a), 22-2401, 22-2901, 22-3202. *Dancy v. United States*, 745 A.2d 259, 2000 D.C. App. LEXIS 12 (2000).

Evidence that victim's former boyfriend smashed glass pane in door, unlocked door, and pursued victims through apartment while he held hatchet established intent to commit felony at moment of entry, and thus, supported conviction for first-degree burglary while armed. D.C. Code 1981, §§ 22-1801, 22-3202. *Kelly v. United States*, 590 A.2d 1031, 1991 D.C. App. LEXIS 110 (1991).

If defendants had several motives for firing weapons into the door of the house and if one of those motives was to gain entry into the house, that would be sufficient evidence to prove attempted first-degree burglary while armed. D.C. Code §§ 22-1801(a), 22-3202. *Harris v. United States*, 373 A.2d 590, 1977 D.C. App. LEXIS 475 (1977).

— **Circumstantial evidence, weight and sufficiency of evidence.**

Circumstantial evidence may be equally as probative as direct evidence, especially in connection with armed robbery charge where defendant is shown to be in possession of property recently stolen. D.C. Code 1973, §§ 22-2901, 22-3202. *Head v. United States*, 451 A.2d 615, 1982 D.C. App. LEXIS 437 (1982).

— **Drug offenses, weight and sufficiency of evidence.**

Evidence that defendant was seen coming and going from house in which drug paraphernalia, loaded semi-automatic pistol, and crack cocaine in plastic bags were found was sufficient to prove that defendant, while on sidewalk in front of house, constructively possessed drugs and gun in house. D.C. Code 1981, §§ 22-3202(a)(1), 33-541(a)(1). *Brown v. United States*, 691 A.2d 1167, 1997 D.C. App. LEXIS 63 (1997).

Evidence of defendant's interaction with his codefendant was sufficient to prove that defendant constructively possessed drugs found in his codefendant's knapsack. D.C. Code 1981, §§ 22-3202(a)(1), 33-541(a)(1). *Brown v. United States*, 691 A.2d 1167, 1997 D.C. App. LEXIS 63 (1997).

Evidence was sufficient to support jury findings that defendants constructively possessed pistol and other contraband, including drugs, found by police in apartment, despite contention that government failed to establish that defendants exercised dominion and control over drugs, gun, or any other contraband; circumstantial evidence linked both defendants to gun, as well as to drugs and other contraband found in apartment. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

— **Homicide offenses, weight and sufficiency of evidence.**

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. D.C. Code §§ 22-501, 22-2401, 22-2403, 22-2801, 22-3202. *United States v. Heinlein*, 490 F.2d 725, 1973 U.S. App. LEXIS 7581 (C.A.D.C. 1973).

Evidence was sufficient to support conviction for conspiracy to commit first-degree murder; there was evidence that two individuals robbed the mother of defendant's child of \$17,000 he had given her for child care, that defendant told various individuals after the robbery that he was going to get revenge, that defendant drove around the neighborhood with another individual seeking information on who was responsible for the robbery and that several individuals told him that victim was one of the robbers, that defendant spoke in slang regarding getting an acquaintance to kill or harm the robber, that 31 hours after the money was stolen the victim was shot 10 times, that after the murder defendant was no longer angry, and that defendant made incriminating statement after the murder that he did not know what happened to the victim just like nobody knew who robbed his house. *Wheeler v. United States*, 977 A.2d 973, 2009 D.C. App. LEXIS 343 (2009), amended by 987 A.2d 431, 2010 D.C. App. LEXIS 211 (D.C. 2010), writ of certiorari denied by 131 S. Ct. 325, 178 L. Ed. 2d 211, 2010 U.S. LEXIS 7488, 79 U.S.L.W. 3204 (U.S. 2010).

Defendant's conviction for first-degree felony murder while armed was supported by evidence that defendant knew of, and had interest in, large amount of money that victim was carrying in his sock, that defendant and victim went into bedroom and closed door, that defendant shot victim, and that when witness discovered victim dead in bedroom, victim's pant leg was pulled up, his sock was down, and his money was gone. D.C. Code 1981, §§ 22-2401, 22-3202. *Busey v. United States*, 747 A.2d 1153, 2000 D.C. App. LEXIS 63 (2000).

Defendant's conviction for first-degree murder while armed was supported by evidence that defendant shot bicyclist, who was first surrounded by group of five or six young men, in apparent dispute over turf between two groups of young men. D.C. Code 1981, §§ 22-2401, 22-3202. *Davis v. United States*, 735 A.2d 467, 1999 D.C. App. LEXIS 165 (1999).

Defendants' convictions for premeditated first-degree murder while armed, assault with intent to kill, carrying pistol without license, and possessing firearm during crime of violence were supported by testimony of officer who witnessed shooting, testimony of two surviving victims, and testimony of defendants' acquaintance. D.C. Code 1981, §§ 22-501, 22-2401, 22-3202, 22-3204(a, b). *Payne v. United States*, 697 A.2d 1229, 1997 D.C. App. LEXIS 163 (1997).

Evidence supported premeditation and deliberation on part of defendant to sustain conviction for first-degree murder; evidence indicated that defendant and four others, all armed, positioned car in which they were riding beside that of intended victim, with whom they had ongoing dispute, and opened fire upon him.

D.C. Code 1981, §§ 22-2401, 22-3202. *Ruffin v. United States*, 642 A.2d 1288, 1994 D.C. App. LEXIS 86 (1994).

Evidence sustained conviction for assault with intent to kill while armed (AWIKWA), although bullet that injured victim giving rise to AWIKWA charge was same bullet that killed another victim, giving rise to homicide charge; where single assaultive act results in criminal injury of multiple victims, there may be as many offenses as there are victims and, thus, trial court was justified in allowing jury to determine whether defendant was guilty of one or both charges. D.C. Code 1981, §§ 22-501, 22-3202. *Ruffin v. United States*, 642 A.2d 1288, 1994 D.C. App. LEXIS 86 (1994).

Evidence that defendant and two accomplices entered apartment building with an intent to commit an assault, and that initial assault resulted in subsequent encounter between defendant and victim resulting in death of victim was sufficient to support defendant's conviction for felony-degree murder; defendant's initial entry constituted burglary, and was "continuing offense" for purposes of felony-murder statute. D.C. Code 1981, §§ 22-2401, 22-3202. *Marshall v. United States*, 623 A.2d 551, 1992 D.C. App. LEXIS 165 (1992).

Defendant's own testimony that he shot victim and eyewitness' testimony that he saw defendant shoot victim and victim fall to ground after bullet went through his head was sufficient to sustain defendant's convictions for second-degree murder while armed, possession of firearm during crime of violence, and carrying pistol without license, though neither gun nor bullet was recovered. D.C. Code 1981, §§ 22-2403, 22-3202, 22-3204(b). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

Unrefuted evidence that decedent was fatally shot at close range after retreating to vehicle and attempting to escape scene of attempted drug purchase proved requisite malice for second-degree murder conviction. D.C. Code 1981, §§ 22-2403, 22-3202. *Price v. United States*, 602 A.2d 641, 1992 D.C. App. LEXIS 22 (1992).

In prosecution for assault with intent to kill while armed with a dangerous weapon, evidence was sufficient to find that defendant's sneaker or tennis shoe was a dangerous weapon, despite contention that it was not shown that shoes caused any injury more significant than would have been caused by bare feet; there was evidence that defendant repeatedly stomped on victim's head with the shoe and there was detailed evidence as to the victim's critical, and probably permanent, injuries. D.C. Code 1981, §§ 22-501, 22-3202. *Price v. United States*, 602 A.2d 641, 1992 D.C. App. LEXIS 22 (1992).

In prosecution for assault with intent to kill with a dangerous weapon, Government, in proving that shoe was a dangerous weapon, was not required to prove that it caused injury greater than that which could have been inflicted by an unshod foot. D.C. Code 1981, §§ 22-501, 22-3202. *Price v. United States*, 602 A.2d 641, 1992 D.C. App. LEXIS 22 (1992).

In prosecution for assault with intent to kill while armed with dangerous weapon, evidence was sufficient to prove defendant's intent to kill, including evidence of defendant's comment, "I hope she's dead," after his initial stomping on the victim. D.C. Code 1981, §§ 22-501, 22-3202. *Price v. United States*, 602 A.2d 641, 1992 D.C. App. LEXIS 22 (1992).

Evidence that defendant was able to act calmly and deliberately shortly after children had been beaten with hammer supported inference that children's murders were premeditated and deliberate and supported conviction for first-degree murder while armed. D.C. Code 1981, §§ 22-2401, 22-3202. *Mills v. United States*, 599 A.2d 775, 1991 D.C. App. LEXIS 216 (1991).

Government introduced sufficient evidence to support jury finding of premeditation required to sustain conviction for first-degree premeditated murder; evidence showed that defendant brought knife to victim's apartment, screamed at victim about his involvement with codefendant and then proceeded to stab victim repeatedly while victim pleaded for his life, and bringing of knife was highly probative of premeditation and deliberation. D.C. Code 1981, §§ 22-2401, 22-3202. *Mills v. United States*, 599 A.2d 775, 1991 D.C. App. LEXIS 216 (1991).

There was sufficient evidence that defendant acted with deliberation in killing victim assessed to sustain conviction for first-degree premeditated murder; defendant stabbed victim at least five times while victim repeatedly pleaded for his life and victim attempted to crawl away before defendant inflicted final stab wound which gave supporting inference that defendant gave killing a "second thought" before inflicting final wound. D.C. Code 1981, §§ 22-2401, 22-3202. *Mills v. United States*, 599 A.2d 775, 1991 D.C. App. LEXIS 216 (1991).

Evidence indicating that upon arriving at scene, defendant entered into an altercation with victim and, without any immediate provocation, proceeded to inflict a severe beating upon victim, and then, as victim fell to ground, stood over him and shot him in head from very close range was sufficient, when combined with evidence of verbal epithets expressed during course of assault, to establish premeditation and deliberation necessary for crime of first-degree murder while armed. D.C. Code 1981, §§ 22-2401, 22-3202. *McAdoo v. United States*,

515 A.2d 412, 1986 D.C. App. LEXIS 432 (1986).

Defendant's action of firing pistol at close range at victim yet only wounding him twice did not require a finding of not guilty of assault with intent to kill. D.C. Code 1981, §§ 22-501, 22-3202. *Smith v. United States*, 470 A.2d 315, 1983 D.C. App. LEXIS 550 (1983), writ of certiorari denied by 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344, 1985 U.S. LEXIS 988, 53 U.S.L.W. 3598 (1985).

Evidence that defendant brought murder weapon to scene of crime permits inference that defendant arrived on scene already possessed of calmly planned and calculated intent to kill. D.C. Code 1981, §§ 22-2401, 22-3202. *Hall v. United States*, 454 A.2d 314, 1982 D.C. App. LEXIS 507 (1982).

In murder prosecution, evidence, including evidence that defendant was former lover of victim with motive to kill, that he carried murder weapon to scene of crime, and that he fired eight shots into decedent's torso while stopping once to assist manually in firing the final bullet, was sufficient to sustain conviction of first-degree murder. D.C. Code 1981, §§ 22-2401, 22-3202. *Hall v. United States*, 454 A.2d 314, 1982 D.C. App. LEXIS 507 (1982).

Evidence, although primarily circumstantial, was sufficient to allow reasonable juror to find that defendant acted with premeditation and deliberation and thus was sufficient to support his first-degree premeditated murder convictions. D.C. Code 1973, §§ 22-2401, 22-3202. *Head v. United States*, 451 A.2d 615, 1982 D.C. App. LEXIS 437 (1982).

Sufficient evidence connected robbery to deaths to sustain defendant's conviction of felony-murder while armed. D.C. Code 1973, §§ 22-2401, 22-3202. *Head v. United States*, 451 A.2d 615, 1982 D.C. App. LEXIS 437 (1982).

Defendant's corroborated admissions, coupled with Government's evidence of crime itself and circumstantial evidence of defendant's participation reasonably permitted finding of guilt beyond reasonable doubt, in prosecution for armed robbery and felony-murder. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202. *Tribble v. United States*, 447 A.2d 766, 1982 D.C. App. LEXIS 380 (1982).

Evidence in homicide prosecution for death of defendant's grandmother, with whom he was living, was sufficient to permit guilty verdict for offense of second-degree murder while armed. D.C. Code §§ 22-2403 to 22-3202. *Fox v. United States*, 421 A.2d 9, 1980 D.C. App. LEXIS 370 (1980).

Evidence sustained convictions for assault with intent to kill while armed and assault with intent to rob while armed. D.C. Code §§ 22-106, 22-501, 22-3202, 22-3214(b). *McBride v. United States*, 393 A.2d 123, 1978

D.C. App. LEXIS 341 (1978), writ of certiorari denied by 440 U.S. 927, 99 S. Ct. 1260, 59 L. Ed. 2d 482, 1979 U.S. LEXIS 938 (1979).

In prosecution for voluntary manslaughter while armed, there was sufficient basis for jury to find beyond a reasonable doubt that (1) offense was committed by someone, (2) defendant participated or assisted in its commission, and (3) she did so with guilty knowledge. D.C. Code §§ 22-2405, 22-3202. *Branch v. United States*, 382 A.2d 1033, 1978 D.C. App. LEXIS 423 (1978).

Testimony that decedent told police officer that he had attempted to close the door to his house "as the man pulled the gun out and started in the house" and evidence that defendants and their colleagues were out to "get" an alleged rapist and wanted to find and beat up the alleged rapist was sufficient to show an attempted burglary as the felony underlying charge of felony murder. D.C. Code §§ 22-1801(a), 22-2401, 22-3202. *Harris v. United States*, 373 A.2d 590, 1977 D.C. App. LEXIS 475 (1977).

Evidence, including testimony of complainant and others concerning incident, reasonably permitted a finding of guilt on charges of armed kidnapping, armed assault with intent to kill, and carrying a dangerous weapon. D.C. Code §§ 22-501, 22-2101, 22-3202, 22-3204. *Wooten v. United States*, 343 A.2d 281, 1975 D.C. App. LEXIS 240 (1975).

— Identity and characteristics of persons or things, weight and sufficiency of evidence.

Evidence on issue of joint criminal venture and possession of purse and shotgun found in speeding automobile, occupied by defendants as driver and passenger, a short time after a purse had been forcibly taken from a pedestrian by two men, one of whom was armed with pistol, was sufficient to support conviction of armed robbery, assault with a dangerous weapon and possession of unregistered firearm, notwithstanding that at least one of four or five original occupants of vehicle had fled and that identification of defendants was "inconclusive" at best. D.C. Code §§ 22-502, 22-2901, 22-3202; 26 U.S.C. (I.R.C.1954) § 5861(d). *United States v. McCall*, 460 F.2d 952, 1972 U.S. App. LEXIS 10560 (C.A.D.C. 1972).

Evidence was sufficient to support finding that juvenile was among the individuals who committed the charged armed robbery; positive identifications were made by two victims at a show-up held some twenty-five minutes after the robbery, victim testified that he recognized defendant by his facial features, dreadlock hair style and wristbands, victims professed to have no doubt about their identifications, and victim was robbed of three new and recently-obtained twenty-dollar bills, while defendant was found

by police in possession of three new twenty-dollar bills. In re T.C., 999 A.2d 72, 2010 D.C. App. LEXIS 398 (2010).

Victim's identification testimony was corroborated, in prosecution for assault with intent to rob while armed, by medical evidence that pellets from shotgun had entered defendant's hand from the back instead of the palm in a manner consistent with victim's version of events, and by defendant's evasive police interview when questioned at hospital where he was being treated. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Identification evidence was sufficient to support defendants' convictions for assault with dangerous weapon and mayhem while armed, where several witnesses positively identified defendants as assailants who beat victim. D.C. Code 1981, §§ 22-501, 22-506, 22-3202. *Sterling v. United States*, 691 A.2d 126, 1997 D.C. App. LEXIS 38 (1997), amended by 1997 D.C. App. LEXIS 107 (D.C. May 13, 1997).

Lapse of 22 days between shooting and victim's identification of defendant as second gunman did not make identification so untrustworthy that evidence was insufficient to support convictions of first-degree burglary while armed and possession of firearm during crime of violence, where victim positively identified defendant at trial, victim testified that he saw faces of both intruders when they burst into his apartment and that daylight was coming in through window, crime took place in mid-morning, victim knew defendant for 10 years before shooting, victim was close to death for several days, and victim first stated that there was second gunman day after shooting. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-3204(b). *Gethers v. United States*, 684 A.2d 1266, 1996 D.C. App. LEXIS 226 (1996), writ of certiorari denied by 520 U.S. 1180, 117 S. Ct. 1458, 137 L. Ed. 2d 562, 1997 U.S. LEXIS 2437, 65 U.S.L.W. 3693 (1997).

Convictions of two counts of armed robbery and one count of possession of firearm during commission of crime of violence or dangerous crime were supported by sufficient evidence, including complaining witness' identification of defendant and identification of defendant's somewhat distinctive car by both witnesses at a second sighting. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b); U.S.C. Const. Amend. 6. *Goins v. United States*, 617 A.2d 956, 1992 D.C. App. LEXIS 307 (1992).

Evidence, including testimony of victim that he was robbed by a man with a gun as he was leaving restaurant, and that there was a streetlight nearby that shed enough light for him to see the robber's face, and his subsequent identification of defendant as person who robbed him at show-up, lineup, and in court, was sufficient to support armed robbery conviction. D.C. Code 1981, §§ 22-2901, 22-3202. *Fields v.*

United States, 484 A.2d 570, 1984 D.C. App. LEXIS 543 (1984), writ of certiorari denied by 471 U.S. 1067, 105 S. Ct. 2144, 85 L. Ed. 2d 501, 1985 U.S. LEXIS 1693, 53 U.S.L.W. 3777 (1985).

Evidence in prosecution wherein defendant was convicted of armed robbery and of carrying pistol without license was sufficient to permit finding of identification beyond reasonable doubt, even considering 18 months time lapse between offense and positive identification of defendant at lineup. D.C. Code §§ 22-2901, 22-3202, 22-3204. *Tolliver v. United States*, 378 A.2d 679, 1977 D.C. App. LEXIS 248 (1977).

— In general.

There was no manifest miscarriage of justice in defendant's convictions under District of Columbia law based on proof that defendant was not licensed to carry arms and that two pistols recovered in his estranged wife's apartment were not registered in his name, even though defendant alleged evidence was insufficient in that record search was fatally flawed because he did not reside at his estranged wife's address and that record search had been limited to registrations and licenses in defendant's name at that address, where there was no claim that search using defendant's correct address would have uncovered any exculpatory license or registration record and where defendant's prior convictions would have made it unlawful for him to own, possess, or register pistol. D.C. Code 1981, §§ 6-2311(a), 6-2312(a)(2), 6-2361, 22-3202, 22-3204. *United States v. Jackson*, 824 F.2d 21, 1987 U.S. App. LEXIS 9570 (C.A.D.C. 1987), writ of certiorari denied by 484 U.S. 1013, 108 S. Ct. 715, 98 L. Ed. 2d 665, 1988 U.S. LEXIS 12, 56 U.S.L.W. 3460 (1988).

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. 18 U.S.C. § 751; D.C. Code §§ 22-502, 22-1122, 22-2901, 22-3202. *United States v. Bridgeman*, 523 F.2d 1099, 1975 U.S. App. LEXIS 11742 (C.A.D.C. 1975), writ of certiorari denied by 425 U.S. 961, 96 S. Ct. 1743, 96 S. Ct. 1744, 48 L. Ed. 2d 206, 1976 U.S. LEXIS 1553 (1976).

— Insanity or other incapacity, weight and sufficiency of evidence.

Record, including testimony of a private psy-

chiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendant's mental impairment as to require his exculpation. D.C. Code §§ 22-502, 22-2901, 22-3202, 22-3204; 18 U.S.C. *United States v. Wilson*, 471 F.2d 1072, 1972 U.S. App. LEXIS 7095 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 957, 93 S. Ct. 1431, 35 L. Ed. 2d 691, 1973 U.S. LEXIS 3264 (1973).

Evidence that, *inter alia*, defendant suffered from severe personality disorder that caused him on occasion to disassociate when his sexual advances were rejected, and that while defendant was in this state, he did not have capacity for choice or control, was sufficient to allow jury to reasonably infer from all evidence that defendant had necessary mental capacity for first degree burglary when he entered victim's apartment armed with knife but that he did not have capacity for choice or control when he killed victim because of a then dissociative condition. D.C. Code §§ 22-501, 22-1801(a), 22-2403, 22-3202, 24-301(j). *Harman v. United States*, 351 A.2d 504, 1976 D.C. App. LEXIS 468 (1976), writ of certiorari denied by 429 U.S. 841, 97 S. Ct. 116, 50 L. Ed. 2d 110, 1976 U.S. LEXIS 2668 (1976).

— Kidnapping offenses, weight and sufficiency of evidence.

Finding that defendant seized victim and detained him against his will was supported, in prosecution for armed kidnapping, by evidence that victim did not want to get into car with defendant and accomplice and that accomplice said, "If you don't want to come with us, it's going to be the Fourth of July out here," that defendant pulled out gun and put his arm around victim's neck when victim's friend was later ordered out of car, and that victim appeared frightened when he arrived at his apartment, where defendant and accomplices proceeded with felonious plan to rob victim and killed victim in the process. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Where defendant encountered complainant and persuaded him to leave public street in order to take a shortcut that led into a field, and thereafter drew a knife and compelled victim to accompany him to a secluded area about 100 feet from road, and then committed sodomy, defendant's conduct could not support separate convictions for both kidnapping and assault with intent to commit sodomy, and kidnapping conviction would be reversed, even though, after being sexually assaulted, victim ran from the place of attack and defendant pursued and

recaptured him and brought him back to wooded area where he suffered multiple stab wounds before being able to make successful escape. D.C. Code §§ 22-503, 22-2101, 22-3202. *Morgan v. United States*, 402 A.2d 598, 1979 D.C. App. LEXIS 367 (1979).

Jury verdict that defendant was guilty of kidnapping while armed supported trial court's finding that murder was committed during the course of a kidnapping, as an aggravating factor in sentencing for first-degree murder while armed. *United States v. Parker*, 136 WLR 141 (Super. Ct. 2008).

— Persons liable, weight and sufficiency of evidence.

Evidence was sufficient to support defendant's convictions for first-degree premeditated murder and assault with intent to kill on an aiding and abetting theory; there was evidence that defendant agreed "in principle" to kill victim, dressed for occasion, and went to place where murder was to occur with people with whom he conspired to engage in the criminal endeavor, defendant stood near scene, and after codefendants started to chase victims, defendant covered his head with hood and had gun in his hand, and there was some evidence that only because his gun jammed did defendant not succeed in personally shooting victim. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Sufficient evidence supported finding that defendant was guilty, as aider and abettor, of murder where defendant shared common purpose with codefendant to kill victim in retaliation for stealing cocaine from them, witness saw defendant, codefendant, and murderer arguing with victim, codefendant told murderer to go get pistol, and defendant furnished murderer with weapon. D.C. Code 1981, §§ 22-2403, 22-3202. *Lyons v. United States*, 683 A.2d 1080, 1996 D.C. App. LEXIS 306 (1996).

Evidence was sufficient to establish that both defendants were acting as principals for purposes of offenses of distribution of cocaine while armed and possession of cocaine while armed with intent to distribute it, since gun found in dresser drawer of apartment bedroom in which defendants conducted drug transaction was readily available to both defendants. D.C. Code 1981, § 22-3202. *Guishard v. United States*,

669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

Evidence was insufficient to support finding that defendant knowingly and intentionally aided and abetted codefendant's armed robbery of victim, who was attempting to purchase handgun, so as to support defendant's armed robbery conviction, despite fact that codefendant robbed victim after defendant told victim to see codefendant respecting handgun purchase; there was no direct evidence that defendant planned robbery or had any advance knowledge that robbery would occur, and codefendant's decision to rob victim appeared to have been improvised at last moment, rather than planned in advance. D.C. Code 1981, §§ 22-2901, 22-3202. *Roy v. United States*, 652 A.2d 1098, 1995 D.C. App. LEXIS 6 (1995).

Evidence in felony-murder prosecution of two defendants, neither one of whom entered apartment where murder was committed, established that murder of victim was the natural and probable consequence of defendants' prior preparation to kill victim's brother, and thus, such murder served as a predicate crime for aiding and abetting conviction, where defendants were part of a group of persons arrayed outside the brother's residence, prepared to kill him, and when they heard that the brother was not home turned and charged directly across the street to the victim's apartment and shot him; under the circumstances, trial court's addition of "natural and probable consequence" language in aiding and abetting instruction did not render the charge erroneous. D.C. Code 1981, §§ 22-2401, 22-3202. *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

In prosecution for assault with intent to commit robbery while armed, evidence that assailants got out of car defendant was driving and almost immediately thereafter assaulted victim, that victim ran after one assailant as he returned to car after committing assault and that defendant had opportunity to see victim and her continued pursuit of that assailant, and that assailants were in car defendant was driving when it was stopped by police short time later was sufficient to support conviction of defendant for aiding and abetting assailants. D.C. Code 1973, §§ 22-2902, 22-3202. *Downing v. United States*, 434 A.2d 409, 1981 D.C. App. LEXIS 350 (1981).

Evidence in prosecution brought against four defendants accused of robbing five victims in hallway of apartment building was sufficient to establish that one defendant, who asserted that he did not appear in hallway of building until victims' property had been taken and did not actually search any of victims, was aider and abettor of crimes charged, and thus was suffi-

cient to support that defendant's conviction for assault with intent to commit robbery while armed. D.C. Code §§ 22-501, 22-3202. *Heiligh v. United States*, 379 A.2d 689, 1977 D.C. App. LEXIS 252 (1977).

— Premeditation and deliberation, weight and sufficiency of evidence.

Evidence was sufficient to establish premeditation and deliberation, as required in order to convict defendant of two counts of first-degree murder while armed with aggravating circumstances, at trial of two defendants for murder and other crimes arising out of a retaliatory shooting; two victims died from gunshot wounds, witnesses to the shooting testified that such defendant emerged from behind a dumpster and began shooting without provocation, and police officer who heard the shooting testified that he noticed a black sports utility vehicle (SUV) with its engine running near the scene of the crime and saw two men run from the direction of the shooting and get into the SUV. *Mitchell v. United States*, 985 A.2d 1125, 2009 D.C. App. LEXIS 651 (2009), writ of certiorari denied by 131 S. Ct. 226, 178 L. Ed. 2d 150, 2010 U.S. LEXIS 6110, 79 U.S.L.W. 3201 (U.S. 2010).

— Robbery offenses, weight and sufficiency of evidence.

Evidence was sufficient to support convictions on count of armed bank robbery, a federal offense, as well as count of armed robbery, a District of Columbia offense. 18 U.S.C. § 2113(a, d); D.C. Code §§ 22-2901, 22-3202. *United States v. Johnson*, 589 F.2d 716, 1978 U.S. App. LEXIS 7184 (C.A.D.C. 1978).

Evidence including testimony of policeman and victims that there was a gun and that a voiced threat was made to shoot one victim was sufficient to justify jury in findings that gun was dangerous and that the offense of assault with intent to rob was committed while armed with a dangerous weapon as alleged in indictment. D.C. Code § 22-3202. *United States v. Prater*, 462 F.2d 292, 1972 U.S. App. LEXIS 10401 (C.A.D.C. 1972).

Evidence was sufficient to show that defendant knowingly participated in attempted armed robbery of victim by codefendant, so as to support conviction for assault with intent to commit robbery while armed (AWIRWA) as aider and abettor; certain vehicle was parked on street where codefendant assaulted victim, defendant was seen driving that vehicle a short time later with codefendant as a passenger, gun that codefendant used in assault was found to left of driver's seat, and, inter alia, defendant began to drive erratically and at a high rate of speed when police officers began to follow vehicle with their emergency signals activated.

Carter v. United States, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

Evidence was sufficient to show that defendant assaulted victim with intent to rob him, so as to support conviction for assault with intent to commit robbery while armed (AWIRWA) and related conviction for possession of a firearm during a crime of violence or dangerous offense (PFCV); victim dropped personal items while walking, defendant informed victim that he had dropped something, victim retrieved his dropped items, thanked defendant, and continued walking, and defendant uttered, "[W]hat about me?" while drawing a gun. Carter v. United States, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

Convictions on an aiding and abetting theory for first-degree premeditated murder and first-degree felony murder were supported by evidence that defendant arranged meeting for ostensible purpose of buying marijuana from victim, that he came to meeting with a gun, that he and co-defendants all drew their weapons as if on cue when defendant asked co-defendant what he thought of the "weed," that defendant during armed robbery took marijuana from victim and pager from victim's associate, and that he shot at victim's associate as victim sustained fatal gunshot wound to head. Porter v. United States, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Defendant's conduct in putting his hand in his pocket and uttering the words "stay back or I'll shoot" during the course of an attempt to steal money established the "armed" enhancement to a crime of violence or a dangerous crime, in prosecution for armed robbery; defendant verbally brandished a weapon and his gestures were consistent with possessing a weapon, and jury could have permissibly inferred from such circumstantial evidence that defendant had a weapon, or imitation thereof, in his pocket during the robbery. Smith v. United States, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Convictions for multiple charges arising out of armed robbery of apartment building were supported by the identification of defendants by victims and police officers, and testimony that the defendants' weapons were operational. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2101, 22-2901, 22-3202, 22-3204(a, b), 22-3214(a). Hanna v. United States, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Finding that robbery defendant was armed with "firearm or imitation firearm" was supported by eyewitness testimony; despite witness' lack of familiarity with handguns, she insisted that silver object she saw in defendant's hand was gun. D.C. Code 1981, §§ 22-3202, 22-3204(b). Bates v. United States, 619 A.2d 984, 1993 D.C. App. LEXIS 23 (1993).

Jury in armed robbery prosecution could conclude that weapons were operable, based on evidence that defendants displayed those weapons during robbery to back up their demands and thus intended that victims believe they were capable of being discharged. D.C. Code 1981, § 22-3202(a). Bartley v. United States, 530 A.2d 692, 1987 D.C. App. LEXIS 424 (1987).

Evidence was sufficient to sustain conviction of assault with intent to commit robbery for incident wherein three assailants accosted victim in alley, even though assailants did not specifically indicate that they intended to rob victim, where two assailants were brandishing pistols and confronted victim saying, "this is it," and victim was shot while attempting to escape. D.C. Code 1981, §§ 22-501, 22-3202. Owens v. United States, 497 A.2d 1086, 1985 D.C. App. LEXIS 477 (1985), writ of certiorari denied by 474 U.S. 1085, 106 S. Ct. 861, 88 L. Ed. 2d 900, 1986 U.S. LEXIS 1161, 54 U.S.L.W. 3484 (1986).

In prosecution for armed robbery, evidence supported defendants' convictions, since victim's identification of defendant, and other evidence construed most favorably to Government, would permit a reasonable jury to find both defendants guilty beyond a reasonable doubt; fact that evidence against codefendant was wholly circumstantial did not affect such conclusion. D.C. Code §§ 22-2901, 22-3202. Jackson v. United States, 395 A.2d 99, 1978 D.C. App. LEXIS 573 (1978).

Evidence, in prosecution of defendant for robbery at gunpoint, was sufficient to support defendant's conviction. D.C. Code §§ 22-2901, 22-3202. Jackson v. United States, 368 A.2d 1140, 1977 D.C. App. LEXIS 417 (1977).

— Sexual assault offenses, weight and sufficiency of evidence.

Evidence was sufficient for jury to infer beyond a reasonable doubt that defendant possessed the intent necessary to sustain conviction for assault with intent to commit rape while armed. D.C. Code §§ 22-501, 22-3202. United States v. Jackson, 562 F.2d 789, 1977 U.S. App. LEXIS 12056 (C.A.D.C. 1977).

"Armed" element required for armed rape conviction was established by evidence that defendant had previously used hot clothes iron to burn victim's breasts and abdomen and that victim feared additional bodily harm if she refused to comply with defendant's orders to have sexual intercourse, even though defendant did not demand sex from victim before or immediately after assaulting victim with iron and did not reach for or mention iron during rape. D.C. Code 1981, § 22-3202(a). Johnson v. United States, 613 A.2d 888, 1992 D.C. App. LEXIS 213 (1992).

Proof of force, in prosecution for assault with intent to commit rape while armed, may be unnecessary if there is evidence that the victim reasonably believed resistance would lead to death or serious bodily harm; such evidence is sufficient to prove defendant's intent to overcome resistance by force and victim's lack of consent. D.C. Code 1981, §§ 22-501, 22-3202. *Glascoe v. United States*, 514 A.2d 455, 1986 D.C. App. LEXIS 409 (1986).

Evidence, which included defendant's threatening of victim with gun, dog, and knife, defendant's statement that he was not yet ready to kill victim, and victim's continuing resistance, supported jury conclusion that defendant intended to accomplish penetration by force in prosecution for assault with intent to commit rape while armed. D.C. Code 1981, §§ 22-501, 22-3202. *Glascoe v. United States*, 514 A.2d 455, 1986 D.C. App. LEXIS 409 (1986).

Although no direct evidence was introduced in rape case to establish that defendant was in fact armed with dangerous weapon during incident, complainant's insistence that defendant did have a knife permitted trial court and jury to find that he did, and thus permitted conviction for armed rape, under rule that reasonable inferences must be drawn in favor of the government. D.C. Code 1981, §§ 22-2801, 22-2901, 22-3202. *Boyd v. United States*, 473 A.2d 828, 1984 D.C. App. LEXIS 328 (1984).

To prove lack of consent in rape case, Government was not required to establish that victim submitted solely because accused had weapon, and it was enough that victim's resistance was overcome through use of physical force and threats, such that she reasonably believed that she would be harmed if she did not submit, and victim's testimony that defendant grabbed her around the neck from behind, held what she thought was knife to her throat and threatened to kill her if she did not accompany him permitted finding of want of consent. D.C. Code 1981, §§ 22-2801, 22-3202. *Boyd v. United States*, 473 A.2d 828, 1984 D.C. App. LEXIS 328 (1984).

— Use of weapon, weight and sufficiency of evidence.

Evidence, including testimony of identification witness, was sufficient to sustain conviction of armed robbery and assault with deadly weapon. D.C. Code §§ 22-502, 22-2901, 22-3202. *United States v. Jones*, 517 F.2d 176, 1975 U.S. App. LEXIS 13243 (C.A.D.C. 1975).

Evidence that *inter alia*, defendant and two other men entered store together, that they conversed together until other customers left the store, that defendant did not lie on the floor when one of the codefendants, with a gun, announced a "stick-up" and said "To the floor.", and that defendant moved from near the door to near the cash register after a codefendant

ordered store employee to open it was sufficient to support defendant's conviction for armed robbery and assault with a dangerous weapon, and conflicting testimony of defendant and his codefendants whereby they all sought to establish that defendant and one of his codefendants were innocent bystanders did not destroy the permissible inference of defendant's guilt. D.C. Code §§ 22-105, 22-502, 22-2901, 22-3202. *United States v. Lumpkin*, 448 F.2d 1085, 1971 U.S. App. LEXIS 9452 (C.A.D.C. 1971).

Evidence, including permissible inference jury was permitted to draw from fact that defendant was found within an hour of larceny in exclusive possession of recently stolen truck, supported convictions of kidnapping of truck helper, armed robbery and assault with a dangerous weapon. D.C. Code §§ 22-502, 22-2101, 22-2901, 22-3202. *United States v. Wolford*, 444 F.2d 876, 1971 U.S. App. LEXIS 11155 (C.A.D.C. 1971).

Evidence was sufficient to show that the injury to victim, after being stabbed multiple times by defendant, involved extreme pain and serious protracted disfigurement, as required to establish "serious bodily injury" element of aggravated assault while armed; victim sustained stab wounds to the stomach, chest and arm in addition to minor nicks from defendant's knife attack, victim testified that he screamed when stabbed and that he was bleeding profusely, officer testified that when he arrived at the scene he observed that victim had a lot of blood on his shirt and that victim appeared to be disoriented and in a great deal of pain, victim underwent surgery and was hospitalized for five days, and victim had scarring as a result of the stabbings. *Jenkins v. United States*, 877 A.2d 1062, 2005 D.C. App. LEXIS 338 (2005).

Sufficient evidence supported conclusion that victim suffered "serious bodily injury," as necessary to sustain conviction for aggravated assault while armed (AAWA); victim testified that he lost consciousness from multiple blows to his head, from which could be concluded that there was not merely substantial risk of unconsciousness, but actual loss of consciousness, thus placing his injuries squarely within statutory definition of "serious bodily injury." *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

Evidence was sufficient to support defendant's conviction of six counts of armed kidnapping, five counts of armed rape, two counts of armed robbery, and one count each of assault with a deadly weapon and armed assault with intent to commit sodomy. D.C. Code §§ 22-502, 22-2101, 22-2801, 22-2901, 22-3202, 22-3502. *Davis v. United States*, 367 A.2d 1254, 1976 D.C. App. LEXIS 448 (1976), writ of certiorari denied by 434 U.S. 847, 98 S. Ct. 154, 54 L. Ed. 2d 114, 1977 U.S. LEXIS 3112 (1977).

Evidence, including testimony that shotgun shells similar to those used in gun used in armed robbery were found in defendant's automobile, was sufficient to sustain convictions of armed robbery and assault with dangerous weapon. D.C. Code §§ 22-502, 22-2901, 22-3202. *Borrero v. United States*, 332 A.2d 363, 1975 D.C. App. LEXIS 324 (1975).

Evidence was sufficient to sustain conviction for assault with a deadly weapon charged as separate and distinct from armed robbery offense. D.C. Code §§ 22-502, 22-2901, 22-3202. *Dixon v. United States*, 320 A.2d 318, 1974 D.C. App. LEXIS 215 (1974).

§ 22-4502.01. Gun free zones; enhanced penalty.

(a) All areas within, 1000 feet of an appropriately identified public or private day care center, elementary school, vocational school, secondary school, college, junior college, or university, or any public swimming pool, playground, video arcade, youth center, or public library, or in and around public housing as defined in section 3(1) of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 654; 42 U.S.C. § 1437a(b)), the development or administration of which is assisted by the United States Department of Housing and Urban Development, or in or around housing that is owned, operated, or financially assisted by the District of Columbia Housing Authority, or an event sponsored by any of the above entities shall be declared a gun free zone. For the purposes of this subsection, the term "appropriately identified" means that there is a sign that identifies the building or area as a gun free zone.

(b) Any person illegally carrying a gun within a gun free zone shall be punished by a fine up to twice that otherwise authorized to be imposed, by a term of imprisonment up to twice that otherwise authorized to be imposed, or both.

(c) The provisions of this section shall not apply to a person legally licensed to carry a firearm in the District of Columbia who lives or works within 1000 feet of a gun free zone or to members of the Army, Navy, Air Force, or Marine Corps of the United States; the National Guard or Organized Reserves when on duty; the Post Office Department or its employees when on duty; marshals, sheriffs, prison, or jail wardens, or their deputies; policemen or other duly-appointed law enforcement officers; officers or employees of the United States duly authorized to carry such weapons; banking institutions; public carriers who are engaged in the business of transporting mail, money, securities, or other valuables; and licensed wholesale or retail dealers.

(July 8, 1932, 47 Stat. 650, ch. 465, § 2a, as added Aug. 18, 1994, D.C. Law 10-150, § 3(b), 41 DCR 2594; Apr. 24, 2007, D.C. Law 16-306, § 223(b), 53 DCR 8610.)

Prior Codifications. — 1981 Ed., § 22-3202.1.

Effect of amendments. — D.C. Law 16-306 rewrote subsec. (a), which had read as follows: "(a) All areas within 1000 feet of a public or private day care center, elementary school, vocational school, secondary school, college, junior college, or university, or any public swimming pool, playground, video arcade, or youth center, or an event sponsored by any of the

above entities shall be declared a gun free zone."

Emergency legislation. — For temporary (90 day) amendment of section, see § 223(b) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 223(b) of Omnibus Public Safety Congressional Review Emergency Amendment

Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 223(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 223(b) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 10-150. — Law

10-150, the “Youth Facilities Firearm Prohibition Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-265, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-233 and transmitted to both Houses of Congress for its review. D.C. Law 10-150 became effective on August 18, 1994.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 22-3302.

CASE NOTES

ANALYSIS

Double jeopardy.

Weight and sufficiency of evidence.

Double jeopardy.

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime required proof of element that others did not, in that unregistered firearm required proof firearm was unregistered, unlawful possession of firearm by felon required proof that defendant

was convicted felon, and carrying pistol without license required proof that defendant carried weapon. *Washington v. U.S.*, 2012 WL 2050378 (2012).

Weight and sufficiency of evidence.

Evidence was sufficient to support conviction for carrying a pistol without a license (CPWL) in a gun-free zone; undisputed evidence at trial showed that defendant possessed the gun 151 feet and 7 inches from the property line of elementary school. *Jeffrey v. United States*, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

§ 22-4503. Unlawful possession of firearm.

(a) No person shall own or keep a firearm, or have a firearm in his or her possession or under his or her control, within the District of Columbia, if the person:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is not licensed under § 22-4510 to sell weapons, and the person has been convicted of violating this chapter;

(3) Is a fugitive from justice;

(4) Is addicted to any controlled substance, as defined in § 48-901.02(4);

(5) Is subject to a court order that:

(A)(i) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or

(ii) Remained in effect after the person failed to appear for a hearing of which the person received actual notice;

(B) Restrains the person from assaulting, harassing, stalking, or threatening the petitioner or any other person named in the order; and

(C) Requires the person to relinquish possession of any firearms;

(6) Has been convicted of an intrafamily offense, as defined in § 16-1001, or a substantially similar offense in another jurisdiction;

(b)(1) A person who violates subsection (a)(1) of this section shall be sentenced to imprisonment for not more than 10 years and shall be sentenced to imprisonment for a mandatory-minimum term of 1 year, unless she or he

has a prior conviction for a crime of violence other than conspiracy, in which case she or he shall be sentenced to imprisonment for not more than 15 years and shall be sentenced to a mandatory-minimum term of 3 years.

(2) A person sentenced to a mandatory-minimum term of imprisonment under paragraph (1) of this subsection shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum sentence.

(c) A person who violates subsection (a)(2) through (a)(6) of this section shall be sentenced to not less than 2 years nor more than 10 years, fined not more than \$15,000, or both.

(d) For the purposes of this section, the term:

(1) "Crime of violence" shall have the same meaning as provided in § 23-1331(4), or a crime under the laws of any other jurisdiction that involved conduct that would constitute a crime of violence if committed in the District of Columbia, or conduct that is substantially similar to that prosecuted as a crime of violence under the District of Columbia Official Code.

(2) "Fugitive from justice" means a person who has:

(A) Fled to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding; or

(B) Escaped from a federal, state, or local prison, jail, halfway house, or detention facility or from the custody of a law enforcement officer.

(July 8, 1932, 47 Stat. 651, ch. 465, § 3; June 29, 1953, 67 Stat. 93, ch. 159, § 204(b); May 21, 1994, D.C. Law 10-119, § 15(b), 41 DCR 1639; Apr. 24, 2007, D.C. Law 16-306, § 223(c), 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 219(b), 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 13, 58 DCR 1174.)

Cross references. — Firearms control, eligibility for registration certificates, see § 7-2502.03.

Forfeiture of vehicles and vessels for weapons offenses, see § 7-2507.06a.

Indeterminate, minimum and maximum sentences, convictions under this section, see § 24-403.

Sentencing, supervised release, and good time credit for felony convictions under this section committed on or after August 5, 2000, see § 24-403.01.

Section references. — This section is referred to in §§ 22-4507, 22-4508, and 22-4510.

Prior Codifications. — 1981 Ed., § 22-3203.

1973 Ed., § 22-3203.

Effect of amendments. — D.C. Law 16-306 substituted "firearm" for "pistol" throughout the section; and rewrote subsec. (b), which had read as follows: "(b) No person shall keep a pistol for, or intentionally make a pistol available to, such a person, knowing that such person has been so convicted or that such person is a drug addict. Whoever violates this section shall be punished as provided in § 22-4515, unless the violation occurs after such person has been convicted of a violation of this

section, in which case such person shall be imprisoned for not more than 10 years."

D.C. Law 18-88 rewrote the section.

D.C. Law 18-377, in subsec. (a)(5)(C), deleted "(as provided in § 16-1005(c)(10))" following "firearms".

Emergency legislation. — For temporary authorization for seizure and forfeiture of firearms under certain circumstances, see § 2 of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986).

For temporary (90 day) amendment of section, see § 223(c) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 223(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 223(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 223(c) of Omnibus Public Safety

Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

For temporary (90 day) additions, see § 2(b) of Inoperable Pistol Emergency Amendment Act of 2008 (D.C. Act 17-652, January 6, 2009, 56 DCR 927).

For temporary (90 day) additions, see § 2(b) of Inoperable Pistol Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-24, March 16, 2009, 56 DCR 2309).

For temporary (90 day) amendment of section, see § 302(c) of Crime Bill Emergency Amendment Act of 2009 (D.C. Act 18-129, June 29, 2009, 56 DCR 5495).

For temporary (90 day) amendment of section, see § 219(b) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 219(b) of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For temporary (90 day) amendment of section, see § 513 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 513 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of section, see § 3(c) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 22-3302.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 22-402.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 22-303.

Editor's notes. — Seizure and forfeiture of conveyances used in firearms offenses: Section 2(b) of D.C. Law 11-273 provided for the forfeiture and seizure of any conveyance, including vehicles and vessels in which any person or persons transport, possess, or conceal any firearm as defined in § 6-2302 [§ 7-2501.01, 2001 Ed.], or in any manner use to facilitate a violation of §§ 22-3203 and 22-3204 [§§ 22-4503 and 22-4504, 2001 Ed.].

CASE NOTES

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Adequacy of representation.

Evidence did not sustain claim of ineffective assistance of counsel who presented all substantial defenses, made appropriate motions and objections, attempted to suppress evidence on charge of unlawful possession of pistol after conviction of felony, and was able to obtain acquittal on charge of threats to do bodily harm and directed verdict in defendant's favor on charge of assault by threatening in menacing manner. D.C. Code §§ 22-504, 22-507, 22-3203. Gressette v. United States, 256 A.2d 418, 1969 D.C. App. LEXIS 286 (App. 1969).

Defense counsel was not ineffective in failing to introduce, during defendant's felony firearm

possession prosecution, cell phone records to corroborate defendant's claim that he was carrying a cell phone rather than a gun during his encounter with the police; two officers saw defendant holding the gun, one officer testified to having been shot at by defendant, and the police later recovered a gun from the scene, and in light of that evidence, there was no reasonable probability that the result of the proceeding would have been different if counsel had sought to introduce his cell phone records. United States v. Hayes, 371 Fed.Appx. 105, 2010 U.S. App. LEXIS 4158 (C.A.D.C. 2010).

Admissibility of evidence.

Inasmuch as suppression order went only to pistol which was wrongfully seized by police, defendant's possession of the pistol could properly be established by independent means, in prosecution for unlawful possession of a pistol after conviction of a felony. D.C. Code 1961, § 22-3203. Coleman v. United States, 219 A.2d 496, 1966 D.C. App. LEXIS 172 (App. 1966), reversed by 397 F.2d 621, 130 U.S. App. D.C. 60, 1966 U.S. App. LEXIS 4442 (1966).

Defendant's admission that he had been playing with gun and it went off accidentally was sufficiently corroborated by testimony of another placing defendant in room with victim

when victim was shot and by detective's testimony that the other person had told him that defendant accidentally shot victim, in prosecution for unlawful possession of pistol after conviction of felony. D.C. Code 1961, § 22-3203. *Coleman v. United States*, 219 A.2d 496, 1966 D.C. App. LEXIS 172 (App. 1966), reversed by 397 F.2d 621, 130 U.S. App. D.C. 60, 1966 U.S. App. LEXIS 4442 (1966).

Where police officer was merely investigating possibility that crime might have been committed when he was told by defendant that he had been playing with gun which had gone off accidentally and officer did not believe that crime had been committed until defendant stated he was on parole, statement made by defendant was not inadmissible on basis that defendant had not been advised of his rights and did not have assistance of counsel. D.C. Code 1961, § 22-3203. *Coleman v. United States*, 219 A.2d 496, 1966 D.C. App. LEXIS 172 (App. 1966), reversed by 397 F.2d 621, 130 U.S. App. D.C. 60, 1966 U.S. App. LEXIS 4442 (1966).

Double jeopardy.

Where defendant waived his right to jury trial and government entered nolle prosequi after witnesses had been sworn, but before first witness began to testify, jeopardy did not attach and did not bar subsequent prosecution for carrying pistol without a license. U.S. Const. Amend. 5; D.C. Code § 22-3203. *Newman v. United States*, 410 F.2d 259, 1969 U.S. App. LEXIS 13335 (C.A.D.C. 1969), writ of certiorari denied by 396 U.S. 868, 90 S. Ct. 132, 24 L. Ed. 2d 121, 1969 U.S. LEXIS 1135 (1969).

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime required proof of element that others did not, in that unregistered firearm required proof firearm was unregistered, unlawful possession of firearm by felon required proof that defendant was convicted felon, and carrying pistol without license required proof that defendant carried weapon. *Washington v. U.S.*, 2012 WL 2050378 (2012).

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosequi it and bring new charge of carrying a pistol without a license, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. D.C. Code §§ 22-3203, 22-3204, 22-3214. *New-*

man v. United States, 239 A.2d 152, 1968 D.C. App. LEXIS 134 (App. 1968).

Indictment and information.

Prosecutor had authority to charge defendant, a felon who possessed an unlicensed pistol while not in his dwelling or on his land, under felony-repeater provisions rather than under misdemeanor statute and by doing so did not deny right to equal protection. D.C. Code §§ 22-3203(2), 22-3204; U.S. Const. Amend. 5. *Palmore v. United States*, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

Instructions.

Note from jury, during deliberations in prosecution for assault with intent to kill while armed (AWIK/WA) and related offenses, demonstrated specific confusion as to the law and required re-instruction from trial court; jury's note indicated its belief that defendant had subjectively perceived need to act as he did in self-defense and had never intended to harm victim, consistent with court's self-defense instruction, but further indicated that it did not believe it could accept defendant's claim of self-defense because force used by defendant was excessive. *Alcindore v. United States*, 818 A.2d 152, 2003 D.C. App. LEXIS 92 (2003).

Jurisdiction.

While statute provided for imprisonment for not more than 10 years on second conviction of carrying a dangerous weapon, where there was no proof that defendant had ever been convicted previously under such statute the felony penalty could not be invoked, so that charge that defendant was in unlawful possession of pistol after he had been previously convicted for carrying a dangerous weapon was within jurisdiction of District of Columbia Court of General Sessions, which could not impose fine of more than \$1,000 or a sentence of longer than one year. D.C. Code 1961, §§ 22-3201 to 22-3216, 22-3203(4), 22-3204. *Burrell v. United States*, 223 A.2d 377, 1966 D.C. App. LEXIS 240 (App. 1966).

Nature and elements of offenses.

Armed robbery does not require the use of or intent to use a weapon in commission of robbery; it requires mere availability of weapon. D.C. Code § 22-3203(a). *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Presumptions and burden of proof.

Satisfactory proof of possessory or ownership interest in pistol, as element of offense of unlawful possession, exists where government shows that defendant did own, possess or have control of gun. D.C. Code 1981, § 22-3203. *Reid*

v. United States, 466 A.2d 433, 1983 D.C. App. LEXIS 479 (1983).

Conviction for unlawful possession of pistol requires government to show that defendant had required possessory or ownership interest in pistol within the district after having been convicted of felony. D.C. Code 1981, § 22-3203. *Reid v. United States*, 466 A.2d 433, 1983 D.C. App. LEXIS 479 (1983).

In order to prosecute a felony under the "felony-repeater" clause of statute pertaining to possession of pistol, government must not only prove that defendant was a felon who possessed or controlled a gun, but, in addition, that the felon had an unlicensed pistol on his person while not in his dwelling or on land owned by him. D.C. Code §§ 22-3203(2), 22-3204. *Palmore v. United States*, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

Introduction of pistol in evidence was not necessary to prove unlawful possession of pistol. D.C. Code 1961, § 22-3203. *Coleman v. United States*, 219 A.2d 496, 1966 D.C. App. LEXIS 172 (App. 1966), reversed by 397 F.2d 621, 130 U.S. App. D.C. 60, 1966 U.S. App. LEXIS 4442 (1966).

Even though defendant, who was charged with making threats in a menacing manner and with unlawfully possessing an automatic pistol, had been discharged from hospital as having recovered from a mental disorder less than two months before date of alleged crimes, usual presumption of defendant's sanity, under District of Columbia law, existed at the time of trial. D.C. Code 1951, §§ 22-504, 22-3203. *Williams v. U.S.*, 104 A.2d 828, 1954 D.C. App. LEXIS 135 (Cr.App. 1954).

Review.

In light of Government's letter to chief judge of superior court and to defendant's counsel, pointing out that length of sentence imposed on defendant for unlawful possession of a pistol was unauthorized because defendant had not previously been convicted under that section, case was remanded to trial court for further proceedings to correct sentence. D.C. Code § 22-3203. *Smith v. United States*, 414 A.2d 1189, 1980 D.C. App. LEXIS 290 (1980).

Searches and seizures.

It was not unreasonable for officers to seize pistol which, as convicted felon, defendant was forbidden to possess, incidental to authorized search of his apartment for narcotics, in absence of showing that presence of pistol on premises was attributable to eight-day delay in execution of search warrant. D.C. Code §§ 22-3203, 22-3601, 33-414(e, i). *Curtis v. United*

States, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

Verdict.

Where assault with dangerous weapon offense was submitted to jury on specific instruction that it could convict on assault with dangerous weapon charge only if it found that separate and apart from pointing the gun at complaining witness, the complaining witness was beaten with the gun, and jury returned verdict of guilty, assault with dangerous weapon was not a lesser included offense within the armed robbery, offenses did not merge, and punishment for both did not constitute cumulative punishment. D.C. Code §§ 22-502, 22-2901, 22-3203. *Dixon v. United States*, 320 A.2d 318, 1974 D.C. App. LEXIS 215 (1974).

Weight and sufficiency of evidence.

Evidence was sufficient to show that defendant, who was convicted felon, possessed firearm, as required to support conviction for unlawful possession of firearm, even though he did not carry firearm during robbery, where codefendant testified that he gave his gun to defendant on way to store and then took it back from defendant before they entered store. *Fox v. United States*, 11 A.3d 1282, 2011 D.C. App. LEXIS 24 (2011).

Evidence was sufficient to support conviction for carrying a pistol without a license, possession of an unregistered firearm, and possession of unregistered ammunition; officer testified that, during stop of defendant's vehicle, defendant hesitated before responding to questions, and that defendant did not look at officer during their conversation and at one point glanced down to where the gun was located, and gun was ultimately discovered under the driver's seat of defendant's vehicle, with the handle visible, following defendant's arrest for driving without a license. *Jones v. United States*, 972 A.2d 821, 2009 D.C. App. LEXIS 183 (2009).

Jury's finding that defendant did indeed own or possess pistol was supported by his admission after questioning that gun was his and by fact that gun was found in box of men's clothing in apartment in which defendant was the sole male occupant. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3203. *Reid v. United States*, 466 A.2d 433, 1983 D.C. App. LEXIS 479 (1983).

As to the sufficiency of evidence of possession of a narcotic drug, narcotics implements, and a pistol, the instant case was controlled by "Hooker," and this holding applied to the jointly possessed narcotic contraband seized on execution of search warrant, as well as to the joint possession of pistol seized 11 days later. D.C. Code §§ 22-3203, 22-3601, 33-402. *Haltiwanger v. United States*, 377 A.2d 1142, 1977 D.C. App. LEXIS 385 (1977).

§ 22-4503.01. Unlawful discharge of a firearm.

Except as otherwise permitted by law, including legitimate self-defense, no firearm shall be discharged or set off in the District of Columbia without a special written permit from the Chief of Police issued pursuant to Section 1 of Article 9 of the Police Regulations of the District of Columbia, effective September 29, 1964 (C.O. 64-1397F; 24 DCMR § 2300.1) [CDCR 24-2300.1].

(July 8, 1932, 47 Stat. 651, ch. 456, § 3a, as added May 20, 2009, D.C. Law 17-388, § 2(b), 56 DCR 1162.)

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

Editor's notes. — Section 3 of D.C. Law 17-388 provided:

"Sec. 3. Savings clause. Nothing in section 2 shall affect any action, proceeding, or prosecution

commenced before September 16, 2008. Any such action, proceeding, or prosecution shall continue, or may be enforced, in the same manner and to the same extent as if the amendments made by that section had not been made."

§ 22-4503.02. Prohibition of firearms from public or private property.

(a) The District of Columbia may prohibit or restrict the possession of firearms on its property and any property under its control.

(b) Private persons or entities owning property in the District of Columbia may prohibit or restrict the possession of firearms on their property; provided, that this subsection shall not apply to law enforcement personnel when lawfully authorized to enter onto private property.

(July 8, 1932, 47 Stat. 651, ch. 456, § 3b, as added May 20, 2009, D.C. Law 17-388, § 2(b), 56 DCR 1162.)

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

Editor's notes. — Section 3 of D.C. Law 17-388 provided: "Sec. 3. Savings clause. Nothing in section 2 shall affect any action, proceeding, or prosecution commenced before September

16, 2008. Any such action, proceeding, or prosecution shall continue, or may be enforced, in the same manner and to the same extent as if the amendments made by that section had not been made."

§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than \$5,000 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.

(July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); July 28, 1989, D.C. Law 8-19, § 3(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(c), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 302, 41 DCR 2608; May 20, 2009, D.C. Law 17-388, § 2(c), 56 DCR 1162.)

Cross references. — Eligibility for geriatric or medical parole, exceptions, see § 24-467.

Forfeiture of vehicles and vessels for weapons offenses, see § 7-2507.06a.

Institutional and educational good time credits, exceptions, see § 24-221.06.

Use of deadly and non-deadly force, private correctional officer employed by private operator, see § 24-261.02.

Section references. — This section is referred to in §§ 22-4505, 24-221.06, and 24-467.

Prior Codifications. — 1981 Ed., § 22-3204.

1973 Ed., § 22-3204.

Effect of amendments. — D.C. Law 17-388 added subsec. (a-1).

Emergency legislation. — For temporary amendment of section, see § 302 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary authorization for seizure and forfeiture of firearms under certain circumstances, see § 2 of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986).

For temporary (90 day) amendment of section, see § 3(b) of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) amendment of section, see § 3(b) of Second Firearms Control

Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-601, December 12, 2008, 56 DCR 9).

For temporary (90 day) amendment of section, see § 2(c) of Inoperable Pistol Emergency Amendment Act of 2008 (D.C. Act 17-652, January 6, 2009, 56 DCR 927).

For temporary (90 day) additions, see § 2(d) of Inoperable Pistol Emergency Amendment Act of 2008 (D.C. Act 17-652, January 6, 2009, 56 DCR 927).

Legislative history of Law 8-19. — For legislative history of D.C. Law 8-19, see Historical and Statutory Notes following § 22-4501.

Legislative history of Law 8-120. — For legislative history of D.C. Law 8-120, see Historical and Statutory Notes following § 22-4501.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 22-4501.

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

Editor's notes. — Seizure and forfeiture of conveyances used in firearms offenses: Section 2(b) of D.C. Law 11-273 provided for the forfei-

ture and seizure of any conveyance, including vehicles and vessels in which any person or persons transport, possess, or conceal any firearm as defined in § 6-2302 [§ 7-2501.01, 2001

Ed.], or in any manner use to facilitate a violation of §§ 22-3203 and 22-3204 [§§ 22-4503 and 22-4504, 2001 Ed.].

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 - Actual or constructive possession, presumptions and burden of proof.
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 - Carrying and concealing, presumptions and burden of proof.
 - In general.
 - Justification or excuse, presumptions and burden of proof.
 - Knowledge and control of weapon, presumptions and burden of proof.
 - Lack of licensure, presumptions and burden of proof.
 - Recidivists, presumptions and burden of proof.
 - Statutory exceptions, presumptions and burden of proof.
- Purposes and legislative intent.
- Questions of law and fact.
- Review.
 - Determination and disposition, review.
 - In general.
 - Presentation and reservation of grounds for review.
 - Right of review.
 - Scope of review.
 - Standard of review, review.
- Right to trial by jury.
- Searches and seizures.
- Self-defense, generally.
- Sentence and punishment.
- Speedy trial rights.
- Stipulations.
- Validity.
- Verdict.
- Weight and sufficiency of evidence.
 - Assault and battery offenses, weight and sufficiency of evidence.
 - Burglary offenses, weight and sufficiency of evidence.
 - Carrying weapon, weight and sufficiency of evidence.
 - Constructive possession, weight and sufficiency of evidence.
 - Homicide offenses, weight and sufficiency of evidence.
 - In general.
 - Insanity or other incapacity, weight and sufficiency of evidence.
 - Knowledge and control of weapon, weight and sufficiency of evidence.
 - Motor vehicle offenses, weight and sufficiency of evidence.
 - Operability of weapon, weight and sufficiency of evidence.
 - Persons liable, weight and sufficiency of evidence.
 - Possession of weapon generally, weight and sufficiency of evidence.
 - Robbery offenses, weight and sufficiency of evidence.
 - Unlicensed weapon, weight and sufficiency of evidence.

Adequacy of representation.

Finding that defendant had requisite knowledge that gun was present in defendant's automobile was supported by evidence, for purpose of conviction for carrying firearm during drug trafficking crime and for carrying pistol without license, and counsel's failure to renew motion for acquittal based on allegedly insufficient evidence thus did not amount to ineffective assistance of counsel, because defendant was not prejudiced thereby. U.S. Const. Amend. 6; 18 U.S.C. § 924(c)(1); D.C. Code 1981, § 22-3204(a). *United States v. Toms*, 136 F.3d 176, 1998 U.S. App. LEXIS 3164 (C.A.D.C. 1998).

Assistance of defense counsel was not inadequate because of refusal, on tactical and other grounds, to cross-examine the Government's principal witness who was 15 years old at time of offense and 16 at time of trial, where it was apparent that had such witness testified further, there was a strong likelihood she would have testified to additional facts that would have supplied factual elements from which jury might have found both defendants guilty of first-degree felony murder or premeditated murder as well as armed robbery and robbery instead of only second-degree murder. D.C. Code §§ 22-2401, 22-2403, 22-2902, 22-3202, 22-3204. *United States v. Clayborne*, 509 F.2d 473, 1974 U.S. App. LEXIS 5639 (C.A.D.C. 1974).

Assistance of defense counsel in prosecution for first-degree murder and robbery was not inadequate for failure to cross-examine the Government's principal witness who was 15

years old at time of offense and 16 at time of trial which failure was attributable to a failure to interview the witness or do adequate research, where record disclosed that counsel had adequate knowledge of the facts, counsel were skilled and experienced, and their tactics were highly successful in that they secured acquittals on two first-degree murder charges for each defendant and also acquittals on both robbery charges. D.C. Code §§ 22-2401, 22-2403, 22-2902, 22-3202, 22-3204. *United States v. Clayborne*, 509 F.2d 473, 1974 U.S. App. LEXIS 5639 (C.A.D.C. 1974).

Where record unequivocally established that, after three years of representing defendant, defense counsel concurred with conclusions reached by psychiatrist and judge that defendant was a malingerer and expressed opinion that it was tactically unwise to raise an insanity defense unless he felt he had a chance, defendant was not entitled to reversal of conviction of armed robbery assault with a deadly weapon and carrying a pistol without a license on ground of judicial interference with his defense counsel's attempt to pursue insanity issue. D.C. Code §§ 22-502, 22-2901, 22-3202, 22-3204, 24-301(a). *United States v. Simms*, 463 F.2d 1273, 1972 U.S. App. LEXIS 9318 (C.A.D.C. 1972).

Counsel rendered effective assistance of counsel with respect defendant's decision not to testify on his own behalf, in armed carjacking prosecution in which defendant would have testified that complainant loaned car to defendant in exchange for cocaine, where counsel advised defendant that defendant could be impeached with prior misdemeanor conviction, that defendant could also be impeached with pre-arrest statement given to police which failed to mention exchange of cocaine, and that defendant could risk exposure to prosecution for distributing drugs, and counsel succeeded in admitting other evidence that corroborated defendant's theory that incident was not a forcible carjacking. U.S. Const. Amend. 6; D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-2903(b), 22-3204(a, b). *Brown v. United States*, 726 A.2d 149, 1999 D.C. App. LEXIS 31 (1999), writ of certiorari denied by 528 U.S. 1130, 120 S. Ct. 967, 145 L. Ed. 2d 838, 2000 U.S. LEXIS 792, 68 U.S.L.W. 3460 (2000), writ of certiorari denied by 528 U.S. 1130, 120 S. Ct. 967, 145 L. Ed. 2d 838, 2000 U.S. LEXIS 793, 68 U.S.L.W. 3460 (2000).

In proceeding in which defendant was convicted of second-degree murder while armed and of carrying pistol without license and in which defense counsel unsuccessfully sought to be permitted to elicit hearsay testimony from officer in regard to a declarant's alleged statement that specified individual other than de-

fendant had shot victim, counsel's failure to secure attendance of declarant, who was absent from the jurisdiction, was not a denial of effective assistance of counsel. D.C. Code §§ 22-2403 to 22-3202, 22-3204; U.S. Const. Amend. 6. *Jackson v. United States*, 424 A.2d 40, 1980 D.C. App. LEXIS 416 (1980), writ of certiorari denied by 454 U.S. 1127, 102 S. Ct. 979, 71 L. Ed. 2d 116, 1981 U.S. LEXIS 3006, 50 U.S.L.W. 3487 (1981).

Defense counsel's performance in prosecution for assault on police officer with dangerous weapon, assault with dangerous weapon and carrying pistol without license, including incidents at suppression hearing, opening and closing statements at trial, examination of witnesses and arguments at sentencing hearing, constituted gross incompetence for purposes of determining whether defendant was denied effective assistance of counsel. D.C. Code §§ 22-502, 22-505(a, b), 22-3204; U.S. Const. Amend. 6. *Oesby v. United States*, 398 A.2d 1, 1979 D.C. App. LEXIS 332 (1979).

Defendant was not denied effective assistance of counsel because of failure of defendant's trial counsel to timely move for joinder of instant armed robbery with felony-murder of which defendant was acquitted. D.C. Code §§ 22-2901, 22-3201, 22-3204. *Harling v. United States*, 372 A.2d 1011, 1977 D.C. App. LEXIS 472 (1977).

Although counsel breached his duty in not moving to withdraw as counsel on appeal where he had represented convicted defendant at trial and, as defendant's attorney on appeal, raised issue of constitutional adequacy of his representation of defendant at trial, where issues were fully explored by both sides and appellate court carefully examined the merits, concluding that representation at trial was adequate, and where concern as to propriety of attorney's appearance before appellate court was raised for first time at oral argument on appeal, defendant's conviction would be affirmed. D.C. Code §§ 22-2901, 22-3201, 22-3204. *Harling v. United States*, 372 A.2d 1011, 1977 D.C. App. LEXIS 472 (1977).

Failure of defense counsel, in prosecution for carrying a pistol without a license and for unlawful possession of marihuana, to call uncle of defendant for purposes of interrogating uncle as to uncle's ownership or prior possession of pistol, did not deprive defendant of his constitutional right to adequate representation where, at a previous trial of defendant for the same offenses, it was suggested to counsel that uncle might claim his Fifth Amendment privilege. D.C. Code §§ 22-3204, 33-402; U.S. Const. Amend. 5. *Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct.

1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

Admissibility of evidence.

— Declarations by accused, admissibility of evidence.

Any error in excluding handwritten note found in victim's bedroom, which stated "[m]y life is going down the drain more and more [victim] is pulling away from me more now," was harmless, in prosecution for murder; the government's case against defendant was strong and undermined defendant's account of what occurred when victim, his girlfriend, was shot, and while defendant stated that both his hands and victim's hands were on the gun when it discharged, medical examiner who conducted the autopsy testified that the forensic evidence was completely inconsistent with victim having had the gun in her hand when she was shot, because no blood or "blowback" was found on the backs of either of her hands. *Riddick v. United States*, 995 A.2d 212, 2010 D.C. App. LEXIS 264 (2010).

After invoking his right to counsel by saying to first police officer, "I'm done talking to you. Go get my lawyer," defendant's immediately following statement to a second police officer, "Can I talk to you, please?" evinced a willingness and a desire for a generalized discussion about the investigation, thus permitting the resuming of custodial interrogation; defendant voluntarily waived his *Miranda* rights when he initially agreed to speak with the police, there was no suggestion that defendant did not still understand those rights when he reinitiated contact, defendant had previous experience with the criminal justice system, and defendant demonstrated knowledge of his rights by invoking his right to counsel in a strategic manner to manipulate the situation and exclude first officer from the interview room. *Jennings v. United States*, 989 A.2d 1106, 2010 D.C. App. LEXIS 83 (2010).

Defendant's statement that he had a gun was voluntary, even though defendant argued, *inter alia*, that he made the statement in response to a tense, rapidly unfolding situation with pervasive police presence; defendant was not under formal arrest and was not in handcuffs, no guns were pointed at defendant, only two officers were on the scene, defendant was on a public street in a residential neighborhood, and nothing else suggested that defendant's will was overborne in such a way that his statement had to be deemed the product of coercion. *Green v. United States*, 974 A.2d 248, 2009 D.C. App. LEXIS 236 (2009).

Officer's questions and actions fell within ambit of public safety exception to *Miranda* rule, and thus defendant's statement that he fired weapon was admissible in trial for carry-

ing pistol without license and related weapons offenses, where officer engaged in questioning only after defendant told officer that he had been shot, and after seeing defendant and second individual with apparent injuries from bullet wounds, and questions as whole objectively reflected officer's stated aim to ascertain and neutralize any threat posed by other shooters in altercation. *Crook v. United States*, 771 A.2d 355, 2001 D.C. App. LEXIS 95 (2001).

Where defendant initiated a conversation with a police officer after having told the officer that he wanted to talk to an attorney before answering any more questions about a murder, he showed an awareness of his rights by his waiver of them at the onset and in a subsequent invocation of them, and, although his conduct was sometimes bizarre, he was responsive to questions, defendant knowingly and intelligently waived his right to remain silent and right to counsel. D.C. Code 1981, §§ 22-3202, 22-3204; U.S. Const. Amends. 5, 6. *Rogers v. United States*, 483 A.2d 277, 1984 D.C. App. LEXIS 523 (1984), writ of certiorari denied by 469 U.S. 1227, 105 S. Ct. 1223, 84 L. Ed. 2d 363, 1985 U.S. LEXIS 1102, 53 U.S.L.W. 3599 (1985).

Alibi statement made by defendant to undercover government agent, in response to statement by government informer to defendant that the agent knew a deputy marshal who could help him, and that if the agent asked about the murder for which defendant had been arrested, defendant could tell agent he had been with informer at a party at the time the murder occurred was not given to agent involuntarily, and therefore use of it at trial did not violate defendant's Fifth Amendment right against self-incrimination, as the agent was investigating the deputy marshal and not defendant, and as, defendant was not required to meet with agent, but did so voluntarily. U.S. Const. Amend. 5; D.C. Code 1973, §§ 22-2403 to 22-3202(a)(1), 22-3204. *Hill v. United States*, 434 A.2d 422, 1981 D.C. App. LEXIS 336 (1981), writ of certiorari denied by 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307, 1982 U.S. LEXIS 432, 50 U.S.L.W. 3548 (1982).

Where defendant had not yet been indicted for murder at point when, in response to statement by government informer to defendant that undercover government agent knew a deputy marshal who could help him, and statement that if the agent asked about the murder, defendant could tell agent he had been with informer at a party at the time the murder occurred, defendant made a statement to that effect during his conversation with agent, rule providing that an accused's right to counsel is violated where there is used at trial evidence of his own incriminating words which federal agents have deliberately elicited from him after he has been indicted and in the absence of

counsel did not apply; therefore, defendant was not entitled to prevent introduction into evidence of the alibi he gave agent. U.S. Const. Amend. 6; D.C. Code 1973, §§ 22-2403 to 22-3202(a)(1), 22-3204. *Hill v. United States*, 434 A.2d 422, 1981 D.C. App. LEXIS 336 (1981), writ of certiorari denied by 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307, 1982 U.S. LEXIS 432, 50 U.S.L.W. 3548 (1982).

Record in prosecution for carrying a pistol without a license in violation of District of Columbia statute supported finding that defendant, to whom Miranda warnings were read by policeman from standard police form and who was given the form to read in police station before being questioned, but who was not asked if he understood contents of form, had been sufficiently informed of his right to remain silent and to counsel. D.C. Code §§ 16-706, 22-3204, 22-3215; U.S. Const. Amend. 5. *Brewster v. United States*, 271 A.2d 409, 1970 D.C. App. LEXIS 359 (App. 1970).

Because police questioning concerning defendant's address could be incriminating in view of charge of violating District of Columbia statute prohibiting carrying an unlicensed pistol except in one's dwelling house, Fifth Amendment applied to questioning concerning defendant's address, and the required constitutional warnings as to right to remain silent and right to counsel were also applicable. D.C. Code § 22-3204; U.S. Const. Amend. 5. *Brewster v. United States*, 271 A.2d 409, 1970 D.C. App. LEXIS 359 (App. 1970).

— Demonstrative or documentary evidence, admissibility of evidence.

Trial court, in prosecution for carrying pistol without license and possession of firearm by convicted felon, properly found that dangers associated with admitting photographs of defendant holding gun did not outweigh their probative value, because even though it was not conclusively proven that room shown in photographs was hotel room in which defendant was discovered with gun or that gun seized was same gun appearing in photographs, those photographs did make it significantly more likely that they were same room and gun and that, as result, defendant was guilty of charged crime of possession; therefore, trial court did not abuse its discretion in admitting photographs into evidence. 18 U.S.C.App. § 1202(a)(1); D.C. Code 1981, § 22-3204. *U.S. v. Blackwell*, 694 F.2d 1325, 1982 U.S. App. LEXIS 23421 (C.A.D.C. 1982).

At time of defendant's trial in 2005 on charge of carrying a pistol without a license (CPWL), the law was not settled that the Confrontation Clause barred admission of a certificate of no registration (CNR), introduced to prove that defendant was not licensed to carry a pistol, in absence of testimony from the person who per-

formed the search of the records, and thus, the error would not have been clear or obvious to trial court, as element for plain error review of unpreserved error; once the Supreme Court decided *Crawford v. Washington* in 2004, Confrontation Clause jurisprudence was dramatically transformed. *Zanders v. United States*, 999 A.2d 149, 2010 D.C. App. LEXIS 408 (2010).

Trial court's error, in allowing jury to view defendant's car during deliberations of assault prosecution, was not harmless; since it was undisputed that a shooting originated from defendant's car, it was logical to infer that the jury was still questioning whether someone else could have actually fired the shots from the backseat, and although deadlocked before viewing the car, jury was able to reach a verdict rather quickly after the viewing. *Barron v. United States*, 818 A.2d 987, 2003 D.C. App. LEXIS 141 (2003).

Medical records that indicated that defendant had a dressed laceration on his right hand were relevant, in prosecution for carrying a pistol without a license, to impeach police officer's testimony that she had a clear view of defendant's right hand and saw nothing distinctive about it as defendant allegedly threw a pistol out of a car window. D.C. Code 1981, § 22-3204(a). *Dockery v. United States*, 746 A.2d 303, 2000 D.C. App. LEXIS 44 (2000).

Where prosecution presented evidence which placed revolver and air pistol in hands of defendant and codefendant, such guns had connection with crime and thus it was not error to admit guns into evidence and show them to jury in prosecution for assault on police officer with dangerous weapon, assault with dangerous weapon, and carrying pistol without license. D.C. Code §§ 22-502, 22-505(a, b), 22-3204. *Oesby v. United States*, 398 A.2d 1, 1979 D.C. App. LEXIS 332 (1979).

— Evidence wrongfully obtained, admissibility of evidence.

Where consent to search cab and subsequent statement regarding gun were both direct product of unlawful detention of cabdriver, it was necessary that his statements made at police headquarters and that evidence seized from cab pursuant to unlawfully obtained consent be suppressed. U.S. Const. Amend. 4; D.C. Code 1973, § 22-3204. *United States v. Allen*, 436 A.2d 1303, 1981 D.C. App. LEXIS 397 (1981).

Where government contends that routine investigative procedures would lead to inevitable discovery, government must show that procedure was clearly routine and that its results were readily predictable, and where police even though they were looking for gun in cab did not find gun first time they looked for it, it could not be said with certainty that routine inventory search, conducted without tainted information,

would have revealed the gun or that result of such search would be readily predictable at all, and thus suppression was required. U.S. Const. Amend. 4; D.C. Code 1973, § 22-3204. *United States v. Allen*, 436 A.2d 1303, 1981 D.C. App. LEXIS 397 (1981).

— **Expert testimony, admissibility of evidence.**

Trial judge made sufficient inquiry, in domestic violence prosecution, to determine whether psychologist's proposed testimony on battered woman syndrome (BWS) satisfied *Dyas* requirements for admissibility of expert testimony, where judge held proceeding in limine with respect to proposed testimony and judge took judicial notice of, and adopted, transcript of *Dyas* hearing from case involving BWS testimony from psychologist. D.C. Code 1981, §§ 22-504, 22-3204(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

Psychologist's expert testimony on battered woman syndrome (BWS) was beyond ken of lay trier of fact and would be helpful to jurors in their consideration of evidence in domestic violence prosecution, and thus, testimony was admissible. D.C. Code 1981, §§ 22-504, 22-3204(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

Psychologist's expert testimony on battered woman syndrome (BWS) was relevant, and prosecution laid sufficient foundation for its admission in domestic violence prosecution, even though psychologist did not examine or specifically diagnose victim. D.C. Code 1981, §§ 22-504, 22-3204(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

Probative value of psychologist's expert testimony on battered woman syndrome (BWS) was not substantially outweighed by its prejudicial effect, and thus, testimony was admissible in domestic violence prosecution. D.C. Code 1981, §§ 22-504, 22-3204(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

Experienced psychologist who wrote and lectured widely on subject of domestic violence and who previously had been qualified as expert witness approximately 75 times was qualified to give expert testimony on battered woman syndrome (BWS) in domestic violence prosecution, despite claim that psychologist

had severe feminist bias. D.C. Code 1981, §§ 22-504, 22-3204(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

— **Hearsay, admissibility of evidence.**

Statements made during videotaped conversation by friend of defendant, asserting to defendant that friend had provided defendant with a gun a week before defendant's wife was murdered, were adoptive admissions by defendant, and thus could be admitted in trial for first-degree murder without violating the Confrontation Clause though defendant's friend did not testify at trial, as defendant was listening to friend's statements, friend repeatedly expressed concern about the temporal proximity to giving defendant a gun and the murder of defendant's wife, assertion that friend provided a gun was an assertion that defendant under all the circumstances should have naturally been expected to deny if it was untrue, and, though defendant denied assertions or suggestions he killed his wife, defendant did not deny assertions that friend provided him with a gun. *Wilson v. United States*, 995 A.2d 174, 2010 D.C. App. LEXIS 223 (2010).

In proceeding in which defendant was convicted of second-degree murder while armed and of carrying pistol without a license, declarant's alleged hearsay statement to officer that specified individual other than defendant shot victim did not have sufficient equivalent circumstantial guarantees of trustworthiness to warrant its admission into evidence as exception to hearsay rule, in that statement was not made under oath, was not made in presence of trier of fact and that declarant was not subject to cross-examination and in view of fact that it was not demonstrated that probability of trustworthiness in statement outweighed normal risks associated with inherent dangers of hearsay statements. D.C. Code §§ 22-2403 to 22-3202, 22-3204; Fed. Rules Evid. Rule 804(b)(5), 18 U.S.C. *Jackson v. United States*, 424 A.2d 40, 1980 D.C. App. LEXIS 416 (1980), writ of certiorari denied by 454 U.S. 1127, 102 S. Ct. 979, 71 L. Ed. 2d 116, 1981 U.S. LEXIS 3006, 50 U.S.L.W. 3487 (1981).

— **Identity of persons or things, admissibility of evidence.**

That defendant's conviction for earlier crime had been set aside pursuant to provisions of Youth Corrections Act did not render inadmissible photographs of fingerprints discovered at scene of crime and identified as defendant's on basis of prints of defendant retained after earlier conviction. 18 U.S.C. § 5021(a); D.C. Code § 22-3204; 26 U.S.C. (I.R.C.1954) § 7237; 18 U.S.C. §§ 533, 534. *Stevenson v. U.S.*, 380 F.2d

590, 1967 U.S. App. LEXIS 6318 (C.A.D.C. 1967).

Photo array identification procedure used by police was not unnecessarily suggestive, nor conducive to irreparable misidentification, even though defendant's photo was the only one that appeared in both the first and second array, in prosecution for various offenses; defendant's appearance in first photo array was different from that in the second, and men depicted in each photo array were similar in size and appearance, and thus, defendant's picture exhibited in first array would not have directed witness's attention to his photo in second array, and defendant did not stand out dramatically in either photo array. *Jones v. United States*, 879 A.2d 970, 2005 D.C. App. LEXIS 409 (2005).

— **In general.**

Defense counsel was entitled, under rule of completeness, to question arresting officer regarding statements defendant made to officer at time of arrest, in order to refute other officer's testimony that defendant had not mentioned having a permit for gun, in prosecution for weapon and drug offenses; government's theory of case was that defendant had kept gun in car to protect marijuana in trunk, but defendant's innocent explanation for why gun was in car tended to undermine that theory and thus was highly relevant to the defense, not only for refuting intent element of gun and ammunition offenses, but also for rebutting defendant's alleged awareness of marijuana in the trunk. *Cox v. United States*, 898 A.2d 376, 2006 D.C. App. LEXIS 207 (2006).

Evidence that defendant's brother committed armed robbery with which defendant was charged was not admissible under reverse Drew/Winfield standard governing admissibility of evidence proffered by criminal defendant that another person committed crime alleged; there was no evidence that anyone had ever confused defendant and brother for one another, or that brother was in any way connected to armed robbery, brother's prior robbery conviction for a pocketbook snatch did not raise reasonable probability that same person committed both crimes, and lack of probative value of evidence outweighed any perceived prejudice to defendant. *Bruce v. United States*, 820 A.2d 540, 2003 D.C. App. LEXIS 151 (2003).

Probative value of evidence of bullet-proof vest that defendant was wearing when arrested following chase through alley outweighed any danger that it would improperly sway jury's deliberations, and thus, evidence of vest was admissible in prosecution for various weapons-related offenses including possession of prohibited weapon. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3204(a), 22-3214(a). *Jones v. United*

States, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

In prosecution for carrying pistol without a license, defendant's proffered testimony indicating that he picked up pistol which he found on ground and put it in his waistband to prevent it from being used by others in hostile crowd intending to turn it over to police when opportunity arose, that he then walked into area of crowd and that he was not in immediate fear of attack when he found the pistol was insufficient to raise issue of self-defense and was inadmissible. D.C. Code § 22-3204. *Mitchell v. United States*, 302 A.2d 216, 1973 D.C. App. LEXIS 251 (1973).

— **In-court identification, admissibility of evidence.**

While lineup was not conducted under most ideal circumstances it was not so impermissibly suggestive to misidentification as to preclude identification testimony by eyewitnesses who had ample opportunity to view defendant during robbery. D.C. Code §§ 22-502, 22-2901, 22-3204; U.S. Const. Amend. 5. *United States v. Neverson*, 463 F.2d 1224, 1972 U.S. App. LEXIS 9905 (C.A.D.C. 1972).

Although police officer's identification of defendant was vulnerable to attack before jury, in that officer could not pick defendant out of photo array a few days after shooting but claimed to recognize defendant 19 days later at student discipline hearing, identification was legally sufficient to support finding by jury that defendant was individual who fired shots at police officer, as required for convictions of assault with a dangerous weapon and possession of firearm during crime of violence. D.C. Code 1981, §§ 22-502, 22-3204(b). *United States v. Bamiduro*, 718 A.2d 547, 1998 D.C. App. LEXIS 178 (1998).

— **Judicial notice, admissibility of evidence.**

In prosecution for carrying without a license pistol which was found in defendant's automobile after he was observed parked in bus zone and was unable to produce his driver's license, trial judge was required to take judicial notice of municipal regulation authorizing police to move an illegally parked automobile since such regulation comes within superior court's original jurisdiction. D.C. Code § 22-3204. *Banks v. United States*, 287 A.2d 85, 1972 D.C. App. LEXIS 340 (1972).

— **Materiality, admissibility of evidence.**

Court's refusal to permit defendant, who was arrested after guns were found in vehicle which had been occupied by him and others and which had been stopped after officers observed wired-on license plates and defective tail lights, to inquire as to nature of police procedure followed in cases of routine spot checks was not

error. D.C. Code § 22-3204. *Garris v. United States*, 295 A.2d 510, 1972 D.C. App. LEXIS 263 (1972).

— Nature of criminal act and attendant circumstances, admissibility of evidence.

In determining whether one's purpose in carrying object was its use as deadly or dangerous weapon, factfinder must consider circumstances surrounding its possession and use, including design or construction of instrument, conduct of defendant prior to his arrest, any physical alteration of instrument, and time and place defendant was found in possession; there is no requirement, however, that defendant evidence specific intent to use instrument for unlawful purpose. D.C. Code 1981, § 22-3204. *Monroe v. United States*, 598 A.2d 439, 1991 D.C. App. LEXIS 292 (1991).

Admission of evidence that defendant was carrying considerable sum of cash when arrested was not abuse of trial court's discretion in trial for carrying a pistol without a license. D.C. Code 1981, § 22-3204. *Bigelow v. United States*, 498 A.2d 210, 1985 D.C. App. LEXIS 479 (1985), dismissed by 737 F. Supp. 669, 1990 U.S. Dist. LEXIS 6844 (D.D.C. 1990).

In prosecutions under the dangerous weapons statute, in the absence of any explanation from the defendant, the conceivable legitimate reasons for carrying an instrument alleged to be a dangerous weapon and the location of his arrest are a proper subject of inquiry. D.C. Code 1981, § 22-3204. *In re S.P.*, 465 A.2d 823, 1983 D.C. App. LEXIS 453 (1983).

In prosecution for possession of prohibited weapon with intent to use it unlawfully against another, defendant may offer evidence of communicated threats in order to show her state of mind during different, relevant time periods to establish that defendant lacked intent at time of possession to use weapon unlawfully. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

— Opinion evidence, admissibility of evidence.

Permitting police officer to testify regarding direction from which shot causing bullet hole in wall was fired did not constitute an abuse of discretion in prosecution for armed robbery and for carrying a dangerous weapon. D.C. Code §§ 22-2901, 22-3202, 22-3204. *United States v. Pierson*, 503 F.2d 173, 1974 U.S. App. LEXIS 7074 (C.A.D.C. 1974).

— Other offenses, admissibility of evidence.

Evidence of the circumstances surrounding prior robbery investigation, involving defendant and the complainant in present prosecution for assault with a dangerous weapon and

for carrying a pistol without a license, was admissible since such evidence was clearly relevant to the identification question which defendant raised by his defense of mistaken identity; moreover, since no evidence was introduced connecting defendant in any way with the earlier crime, the possibility of any prejudice to defendant in the instant case was remote. D.C. Code §§ 22-502, 22-3204. *United States v. Mizzell*, 452 F.2d 1328, 1971 U.S. App. LEXIS 7048 (C.A.D.C. 1971).

Trial judge did not abuse his discretion by admitting into evidence, over objection, proof that, fifteen months after the charged offense of possession of crack cocaine with the intent to distribute it while armed (PWIDWA), defendant was arrested again, and that on this later occasion defendant had in his possession twenty-two grams of crack cocaine, two pagers, and \$120 in cash, where defendant contended that the forty-eight rocks of cocaine recovered from his possession at the time of his arrest for current charge were for his personal use, thus placing in issue whether he intended to distribute the cocaine. *Anthony v. United States*, 935 A.2d 275, 2007 D.C. App. LEXIS 322 (2007).

— Relevancy, admissibility of evidence.

Exclusion of arresting officer's testimony that there was no attempt to obtain fingerprints from pistol, which was found protruding from paper bag on passenger's side of transmission hump of defendant's automobile but within reach of the driver, was not error, as denying defendant the possible corroboration of his testimony that a passenger had alighted from vehicle on approach of police, had passenger's prints been found on weapon where defendant never sought to introduce fingerprint matter and did not seek to have Government perform fingerprint analysis or attempt to obtain such analysis himself. D.C. Code § 22-3204. *United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Probative value of hospital records, which indicated defendant had a dressed laceration on his right hand, to impeach police officer's testimony that she had a clear view of defendant's right hand and saw nothing distinctive about it as defendant allegedly threw a pistol out of a car window, was not substantially outweighed by its prejudicial effect, in prosecution for carrying a pistol without a license. D.C. Code 1981, § 22-3204(a). *Dockery v. United States*, 746 A.2d 303, 2000 D.C. App. LEXIS 44 (2000).

Fact that defendant was wearing bullet-proof vest when arrested, combined with testimony that officers saw defendant with a gun, defendant's flight through alley, and location of gun in defendant's path of flight, was relevant to whether defendant also possessed machine gun. D.C. Code 1981, §§ 6-2311(a), 22-3204(a),

22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

For purposes of prosecution for possession of prohibited weapon with intent to use it unlawfully against another, evidence tending to prove that defendant had weapon for permissible purpose would tend to negate government's evidence of unlawful intent, and threats communicated to defendant could be relevant by illuminating defendant's state of mind during period weapon was carried. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

In prosecution for possession of prohibited weapon with intent to use it unlawfully against another wherein defendant claimed that she had seized weapon for use in defending herself, as to period of fight when defendant used or attempted to use weapon against victim and made claim of self-defense, both communicated and uncommunicated threats to defendant became relevant to negate prosecution's effort to prove unlawful intent. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

In prosecution for possession of prohibited weapon with intent to use it unlawfully against another wherein defendant raised defense of self-defense, trial court erred in excluding evidence of uncommunicated threats against defendant by complaining witness, since that evidence was relevant to issue of whether complaining witness was the aggressor. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

Trial court, in prosecution for possession of sawed-off shotgun, did not err or abuse discretion in determining that proffered testimony of defendant regarding circumstances of his possession of shotgun would be irrelevant and inadmissible to prove innocent possession of prohibited weapon, in that evidence did not show that defendant had found prohibited weapon recently, and testimony did not establish that defendant intended to deliver gun to law enforcement officials at time he was apprehended. D.C. Code §§ 22-3204, 22-3214(a). *Worthy v. United States*, 420 A.2d 1216, 1980 D.C. App. LEXIS 379 (1980).

Amendments.

Statute as it existed at time of defendant's conviction for carrying dangerous weapon would be applied, in absence of any specific legislative intent to contrary. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Arguments and conduct of counsel, generally.

Reference in Government's rebuttal argument to lack of corroboration of defendant's

testimony concerning alleged passenger in defendant's automobile did not constitute improper comment on a missing witness since remarks did not directly, or in a meaningful indirect manner, ask the jury to draw an impermissible inference from absence of alleged passenger; to extent that existence of passenger was challenged it was clearly in context of his existence as a passenger of defendant, charged with carrying a pistol without a license, on evening of arrest rather than as possessor of pistol, which was found in defendant's automobile. D.C. Code § 22-3204. *United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Prosecutor's act of twice misrepresenting testimony of defense witness during rebuttal argument, in which prosecutor asserted that witness had incriminated defendant of possession of a pistol when in fact she had not, resulted in substantial prejudice to defendant regarding charges of possession of crack cocaine with the intent to distribute it while armed (PWIDWA), possession of a firearm during a crime of violence or dangerous offense (PFCV), and carrying a pistol without a license (CPWOL); government's proof that defendant was armed was not especially compelling, misrepresentations were substantial, and only measure taken to remedy the effects of the prosecutor's misrepresentations was contemporaneous instruction that jury's recollection controlled and that counsel's statement were not evidence. *Anthony v. United States*, 935 A.2d 275, 2007 D.C. App. LEXIS 322 (2007).

Prosecutor's closing argument to consider defendant before painting government witnesses "as to the low life that you might want to believe they are" was improper in prosecution for murder, burglary, and carrying of pistol without license. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *James v. United States*, 580 A.2d 636, 1990 D.C. App. LEXIS 223 (1990).

Prosecutor who failed to disclose witness' photographic identification of defendant despite trial court's order to disclose all identifications to defense before testimony and who could have informed defendant of photographic identification at bench conference immediately preceding testimony of witness committed misconduct in prosecution for armed robbery, assault with intent to commit robbery while armed, assault with intent to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's misconduct which consisted of failure to disclose witness' photographic identification of defendant before testimony despite trial court's order to disclose all photographic

identifications to defendant, which occurred after another witness' identification of defendant's photograph, and which occurred in trial with weak defense to robbery charges and implausible explanation by defendant for possession of stolen property did not substantially prejudice defendant by swaying jury verdict in prosecution for armed robbery, assault with intent to kill and commit robbery while armed assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor who made incomplete missing witness argument after objection was sustained to claim that only girl friend and sister supported defendant's alibi of being at party with several other people acted improperly in prosecution for armed robbery, assault with intent to commit robbery and with intent to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor who called victims of robbery to testify despite knowledge that victims poorly remembered events, who wanted jury to be able to hear from victims named in indictment, who wanted to prevent adverse inference against government that could result from absence of victims' testimony, and who wanted to test witnesses' ability to contribute to truth did not call witnesses for improper motives and did not commit misconduct in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's closing argument, which urged jurors to use "knowledge of the street" to evaluate each witness' testimony and which stated that two victims for reasons of their own repeatedly testified as to inability to recall events, created ambiguity whether prosecutor intended to remind jurors to use common sense or whether prosecutor was arguing facts not in evidence and suggesting that victims suffered false loss of memory, did not clearly demonstrate prosecutor's intent to argue worst possible meaning, and, therefore, was not misconduct in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

In prosecution wherein one defendant was convicted of carrying a pistol without a license

and both defendants were convicted of armed robbery, suggestion that dire harm would have come to victim, taxi driver, if defendants had had correct caliber bullet was speculative, totally lacking in support by evidence, and irrelevant, and was objectionable as clearly calculated to arouse sympathy of jurors for victim and to play on their personal fears about violence. D.C. Code 1973, §§ 22-2901, 22-3202, 22-3204. *Powell v. United States*, 455 A.2d 405, 1982 D.C. App. LEXIS 496 (1982).

Statement by prosecutor at trial of defendant for second-degree murder while armed, and carrying a pistol without a license, that testimony of the Government's witness was especially credible since witness chose to testify against defendant even though he was convinced that by doing so he faced "certain death" did not constitute reversible error, especially in light of trial court's careful instructions which mitigated the potential for prejudice which the prosecutor's remarks might have caused. D.C. Code 1973, §§ 22-2403 to 22-3202(a)(1), 22-3204. *Hill v. United States*, 434 A.2d 422, 1981 D.C. App. LEXIS 336 (1981), writ of certiorari denied by 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307, 1982 U.S. LEXIS 432, 50 U.S.L.W. 3548 (1982).

Trial court did not err in refusing to give curative instruction after prosecutor suggested, in closing argument, that defendant may have carried his pistol prior to the incident in question with intent of using it to commit a crime since that statement was a proper rebuttal to defense counsel's argument that defendant had been carrying the gun to defend himself and that the government had failed to show any motive for the shooting and, in addition, court subsequently instructed jury that arguments of counsel are not evidence. D.C. Code §§ 22-501, 22-505, 22-3202, 22-3204. *Fletcher v. United States*, 335 A.2d 248, 1975 D.C. App. LEXIS 357 (1975).

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. D.C. Code §§ 22-501, 22-502, 22-3202, 22-3204. *Smith v. United States*, 315 A.2d 163, 1974 D.C. App. LEXIS 371 (1974), writ of certiorari denied by 419 U.S. 896, 95 S. Ct. 174, 42 L. Ed. 2d 139, 1974 U.S. LEXIS 2930 (1974).

In prosecution for carrying a dangerous weapon, prosecutor's reference to defendant

during argument to jury as a "burglar, thief, robber" was improper but did not prejudice defendant in view of fact that prosecutor ceased his argument immediately upon using the objectionable words, that trial court clearly instructed jury shortly before prosecutor's improper remark that evidence of defendant's prior convictions was introduced solely for a limited purpose and that both prosecutor and defense counsel repeated and reemphasized the limited purpose for which evidence of prior convictions had been introduced. D.C. Code § 22-3204. *Maxwell v. United States*, 297 A.2d 771, 1972 D.C. App. LEXIS 294 (1972), writ of certiorari denied by 412 U.S. 921, 93 S. Ct. 2740, 37 L. Ed. 2d 147, 1973 U.S. LEXIS 2294 (1973).

Where prosecuting attorney's inquiry of defense counsel as to whether defendant would be placed on the witness stand in prosecution for carrying a concealed weapon was not heard by jury until repeated by defense counsel in request for declaration of a mistrial, refusal to declare a mistrial was not error, in view of instruction as to defendant's rights, since defendant could not complain of action of his own counsel. D.C. Code, 1940, § 22-3204. *Van Storey v. U.S.*, 77 A.2d 318, 1950 D.C. App. LEXIS 203 (Cr.App. 1950).

Arraignment and pre-trial hearings.

Record did not show that trial judge failed to determine that defendant's plea of guilty to carrying deadly weapon after previous conviction of like offense or of a felony had been made voluntarily, after proper advice, with understanding of nature of charge and consequences. D.C. Code § 22-3204; Fed.Rules Crim.Proc. rule 11, 18 U.S.C. *Barnett v. United States*, 403 F.2d 918, 1968 U.S. App. LEXIS 5331 (C.A.D.C. 1968).

In prosecution for carrying pistol without a license, where both written motion to suppress gun and defendant's trial testimony supported gun's admissibility, defendant could not argue that his presence at suppression hearing was required to aid counsel in cross-examination regardless of whether he would also testify. D.C. Code § 22-3204; U.S. Const. Amend. 4. *Poteat v. United States*, 330 A.2d 229, 1974 D.C. App. LEXIS 326 (1974).

Arrest.

Special police officer, who had been appointed under authority of statute authorizing commissioning of such officers for duty in connection with property of or under control of corporation or individual, had authority to arrest defendant, whom officer noted had revolver in top of his trousers, for misdemeanor of carrying a concealed weapon. Fed.Rules Crim.Proc. rule 11, 18 U.S.C.; D.C. Code §§ 4-115, 22-3204.

United States v. Dorsey, 449 F.2d 1104, 1971 U.S. App. LEXIS 9001 (C.A.D.C. 1971).

Where officers were investigating reported burglary, and defendants were seen carrying coffee table, and their distinctive clothing matched clothing of men seen in vicinity of burglary, and there was a furtive disposal of instrumentalities of burglary by one defendant, and other defendant attempted to get his gun out of pocket as officers approached, there was probable cause for arrest of defendants and for their search and search of their automobile. D.C. Code §§ 22-1801(b), 22-2201, 22-3204. *United States v. Cunningham*, 424 F.2d 942, 1970 U.S. App. LEXIS 10048 (C.A.D.C. 1970), writ of certiorari denied by 399 U.S. 914, 90 S. Ct. 2218, 26 L. Ed. 2d 572, 1970 U.S. LEXIS 1479 (1970).

Arrest of defendant, who was observed by officers running across street from church doorway at midnight, and who, when stopped, used obscene language toward officers, on charges of disorderly conduct was lawful, and thus incriminating statement made by defendant and pistol found near scene of arrest were not inadmissible on the grounds asserted. D.C. Code 1961, §§ 4-140, 22-1107, 22-3204. *Johnson v. United States*, 370 F.2d 489, 1966 U.S. App. LEXIS 4290 (C.A.D.C. 1966).

Officer had probable cause to believe that housebreaking had been committed and that defendant was offender, so as to justify arrest without warrant in course of which was discovered a pistol giving rise to prosecution for carrying weapon without license, in view of strong belief communicated to officer by one who knew defendant that defendant was one who had broken into such individual's mother's home, and in view of officer's observation and other information he learned from both such individual and defendant, and accordingly pistol was admissible in evidence. D.C. Code 1961, § 22-3204. *Paris v. United States*, 321 F.2d 378, 1963 U.S. App. LEXIS 4814 (C.A.D.C. 1963).

Evidence established that police officers saw gun handle sticking out of defendant's pocket and had probable cause to believe that defendant was carrying dangerous weapon in violation of law. D.C. Code §§ 22-3204, 23-306(a, b). *United States v. Jenkins*, 276 F. Supp. 958, 1967 U.S. Dist. LEXIS 8582 (D.D.C.1967).

Defendant preserved for appellate review assertion that trial court erroneously precluded him from cross-examining the arresting officer during defendant's suppression hearing in weapons prosecution about a civil suit for false arrest pending against the officer without first hearing a proffer from defendant on the relevance of the proposed cross-examination, where defendant sought trial court's permission to proffer the relevance of the proposed cross-examination once and, although the trial court prefaced its ruling excluding inquiry into the

civil suit with the phrase, "Not right now," the trial court made it clear throughout the hearing that it would not entertain questioning about facts that it considered outside the scope of the issue of consent, even if they related to officer's credibility. *Dawkins v. United States*, 41 A.3d 1265, 2012 D.C. App. LEXIS 151 (2012).

Police officer had a reasonable, articulable suspicion of criminal activity that justified Terry stop of defendant in police station's impound parking lot to investigate for weapons, where an in-person citizen informant stated that defendant's car was sitting in a remote area of the lot and that she was concerned that her nephew, who was in the police station, would be shot by defendant, and police officer confirmed by his own observation the information about the location of defendant's car, which was in an area that officer had never seen any occupied cars, especially at two o'clock in the morning. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

It was reasonable for police officer, during valid investigatory stop for weapons, to instruct occupants of defendant's car to step out of the vehicle and then to handcuff them before engaging in additional investigation, where in-person citizen informant indicated that the car was located at a remote area of police station's impound parking lot, and that she feared the car's occupants were there to shoot her nephew when he left the police station, defendant was a large man, and it was two o'clock in the morning. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

It was reasonable for police officers, during valid investigatory stop for weapons, to take a look into defendant's car to see if they saw any visible weapon, where in-person citizen informant indicated that the car was located at a remote area of police station's impound parking lot, and that she feared the car's occupants were there to shoot her nephew when he left the police station, and it was two o'clock in the morning. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

The doctrine of plain view justified the seizure of a gun from defendant's car during a valid Terry stop in a police parking lot at two o'clock in the morning; after defendant was asked to step out of the vehicle, police officer, when shining a flashlight in the car, saw the gun in plain view on the driver's side near the spot where defendant's right thigh would have been positioned, which provided the officer with probable cause to seize the gun. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Police officer, who saw a small manila envelope and a package of cigarette papers lying next to each other on the console while waiting outside the car for defendant to find his identification, and who recognized the envelope as

one that was commonly used to package marijuana, acted lawfully in ordering defendant out of the car, and since he had probable cause to arrest defendant for possession of marijuana on looking inside envelope and finding that it did in fact contain marijuana, he also had right to search passenger compartment of vehicle and to seize a .22-caliber automatic pistol he observed in plain view protruding from under floor mat. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204; U.S. Const. Amend. 4. *Purce v. United States*, 482 A.2d 772, 1984 D.C. App. LEXIS 510 (1984).

Where although cabdriver was not formally arrested before he was taken to police station he was told "you have to come to homicide with us" and where he was frisked before he was placed in police car and from moment he arrived at headquarters he was constantly guarded and his hands were tested to determine if he had fired a gun, he was "seized" for Fourth Amendment purposes when he was transported to police headquarters and detained and interrogated there for four hours and, there being want of probable cause, seizure was unlawful. U.S. Const. Amend. 4; D.C. Code 1973, § 22-3204. *United States v. Allen*, 436 A.2d 1303, 1981 D.C. App. LEXIS 397 (1981).

Where Government failed to reveal any circumstances at all underlying unidentified informant's conclusion that defendant was selling narcotics, where tip did not contain details concerning defendant's criminal activity, and where prosecution failed to show that informant's allegation of criminal conduct was based on something more substantial than a casual rumor or defendant's general reputation, Government failed to show informant's basis of knowledge for his tip, and thus arrest and subsequent search were unlawful, even though police were able to confirm details contained in tip concerning defendant's clothing and location. D.C. Code § 22-3204. *Nance v. United States*, 377 A.2d 384, 1977 D.C. App. LEXIS 364 (1977).

Frisk of suspect was lawful where it occurred after officer received radio report of citizen's complaint of "man exposing himself and Peeping Tom," where officer sighted suspect, who generally matched description given, within one hour and only one block from location of reported offense, and where suspect reacted evasively upon seeing police cruiser. D.C. Code §§ 22-1112(a), 22-1121(1), 22-3204, 23-581; U.S. Const. Amend. 4. *Robinson v. United States*, 355 A.2d 567, 1976 D.C. App. LEXIS 514 (1976).

Where passenger-owner of automobile told police officer that defendant driver had a gun, police officer had constitutional justification for seizing gun and arresting defendant for carrying pistol without a license even if gun was

seized from automobile seat as defendant exposed it to officer's view, as claimed by defendant, rather than from defendant's person, as claimed by officer. D.C. Code § 22-3204; U.S. Const. Amend. 4. *Poteat v. United States*, 330 A.2d 229, 1974 D.C. App. LEXIS 326 (1974).

Facts known to police officer, including his observation of assault victim and the victim's spontaneous positive identification of defendant, unquestionably gave officer probable cause to arrest, and the ensuing search of defendant which uncovered pistol was therefore valid as incidental to the arrest. D.C. Code § 22-3204; U.S. Const. Amend. 4. *Hardy v. United States*, 316 A.2d 867, 1974 D.C. App. LEXIS 389 (1974).

Where police officers watched defendants stalk two female pedestrians at 2:00 in the morning, return to their car, depart abruptly, and lead police officers in high-speed chase, and where one occupant had been seen leaning down in the front seat, police officers were justified in stopping the car and searching under the front seat and behind the glove compartment, where stolen, unlicensed pistol was found, after the occupants had been removed from the car. D.C. Code §§ 22-2205, 22-3204. *United States v. Thomas*, 314 A.2d 464, 1974 D.C. App. LEXIS 353 (1974).

Where patrolling officer observed defendant drive by and observed on dashboard of defendant's automobile a box similar to those used to commercially package ammunition, officer had right to stop vehicle to inquire whether defendant in fact possessed a gun and, if so, whether there was compliance with local licensing statute; failure of defendant, who stated that he was carrying a weapon, to produce license constituted probable cause for arrest and authorized protective search; pistol seized in search was admissible. D.C. Code § 22-3204. *Gordon v. United States*, 305 A.2d 522, 1973 D.C. App. LEXIS 301 (1973).

Where there had been no report of a crime in area, police officer at time of search was not investigating any criminal act, defendant's actions were not suspicious and incident occurred in afternoon, police officer did not have reason to believe that defendant was possessed of a weapon or that crime had been committed or was in process of commission, stop and frisk of defendant and seizure of pistol from defendant's person was not reasonable and pistol was inadmissible in prosecution for carrying a pistol without a license. D.C. Code § 22-3204; U.S. Const. Amend. 4. *Kenion v. United States*, 302 A.2d 723, 1973 D.C. App. LEXIS 255 (1973).

Putative police regulation requiring a frisk of anyone getting into a patrol car whom the police don't know or believe to have committed a crime did not justify the frisk of defendant, resulting in discovery that he was carrying an

unlicensed pistol, where one police officer candidly testified that in his own mind defendant was free to go before the frisk took place, and where, clearly the frisk occurred in spite of the fact that police officers were not even suspicious that defendant was armed or dangerous. D.C. Code § 22-3204. *Gilchrist v. United States*, 300 A.2d 453, 1973 D.C. App. LEXIS 221 (1973).

Although citizen refused to give his name when he told police officers that named person was sitting on porch in certain block, was wearing black shirt, blue knit hat, had artificial leg and had gun in his waistband, officers who found on porch in the described block a sleeping man wearing described clothing and who determined the man had artificial leg, had right to question man and, before questioning, had right to make limited search or frisk to ascertain if he was armed; thus pistol found in his waistband was legally seized and should not have been suppressed. D.C. Code §§ 22-3204, 23-104(a). *United States v. Walker*, 294 A.2d 376, 1972 D.C. App. LEXIS 243 (1972).

Pat down of defendant, which revealed a concealed weapon, violated Fourth Amendment's protection against unreasonable "intrusion," where there was little, if any, evidence from which it could be concluded that officers, who observed defendant for about six minutes, and who stated that they saw a passing of money on a street which the officers characterized as being located in a "high narcotics area," had either an articulable suspicion or reasonable grounds to believe that the suspects, defendant included, were armed and dangerous, so that pistol was seized in an illegal search and should have been suppressed in prosecution for carrying a pistol without a license. U.S. Const. Amend. 4; D.C. Code § 22-3204. *Gray v. United States*, 292 A.2d 153, 1972 D.C. App. LEXIS 220 (1972).

Where officers who had observed defendant peering into automobiles later observed defendant holding some object under his coat and when defendant refused to remove his hands from his pockets search for weapons was made disclosing that defendant was concealing beneath his coat a tape player, the connecting wires of which had been broken, action of police in confronting defendant on street was reasonable and disclosure of the tape player gave officers probable cause for arrest even though no victim had reported a loss, and pistol seized two days later during execution of arrest warrant was not the fruit of an unlawful arrest. D.C. Code §§ 22-2202, 22-3204, 23-581(a)(1)(C), (a)(2). *Jenkins v. United States*, 284 A.2d 460, 1971 D.C. App. LEXIS 249 (1971).

Conduct of officers, who had information that man was sitting in described automobile with gun, in approaching automobile fitting description and asking occupant to step out of automob-

bile constituted a justifiable investigative stop and it was proper for one officer to seize pistol which came within his plain view when occupant opened automobile door and to arrest occupant. D.C. Code § 22-3204. *Jenkins v. United States*, 284 A.2d 460, 1971 D.C. App. LEXIS 249 (1971).

Police officers, who, pursuant to information from unidentified citizen that certain automobile was carrying weapons, followed automobile and discovered that it had improper license tags, were warranted in stopping automobile, frisking occupants, and arresting defendant when loaded pistol was found in his possession; thus, defendant was not entitled to have pistol suppressed as evidence in prosecution for carrying pistol without license. D.C. Code § 22-3204; U.S. Const. Amend. 4. *United States v. Frye*, 271 A.2d 788, 1970 D.C. App. LEXIS 373 (App. 1970).

Officers who viewed inside of automobile in which defendant was sitting on parking lot of restaurant at 4:30 A.M. while conducting customary check of premises and saw two other persons lying down in automobile and observed what appeared to be a .38 caliber cartridge on floor had probable cause to believe that there was dangerous weapon in automobile and were justified in arresting defendant, and revolver which was in plain sight when officers opened door to make arrest was admissible. D.C. Code §§ 22-3204, 23-306. *Lucas v. United States*, 256 A.2d 574, 1969 D.C. App. LEXIS 299 (App. 1969).

Police officers to whom was communicated through regular channels a report from an unknown eyewitness concerning purported robbery and presence of nearby suspect who was identified in manner which fit defendant's description, had probable cause to arrest without a warrant defendant whom they found near scene of purported robbery, and gun taken in search of defendant's person was admissible in prosecution for carrying the pistol without a license, notwithstanding robbery report was later proved to be false. D.C. Code § 22-3204. *Carter v. United States*, 244 A.2d 483, 1968 D.C. App. LEXIS 185 (App. 1968).

Probable cause to justify arrest for carrying dangerous weapon does not require exact knowledge of character of the weapon. D.C. Code § 22-3204. *Scott v. United States*, 243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

Officer who before beginning conversation with defendant and defendant's companion in lobby of movie theater saw defendant's companion drop knife into cigarette ash container and who saw defendant attempting to slide knife up sleeve of his coat had probable cause for arrest and for subsequent seizure of defendant's knife. D.C. Code § 22-3204. *Scott v. United States*,

243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

Arrest without a warrant for carrying a dangerous or deadly weapon may be made on probable cause. D.C. Code §§ 22-3204, 23-306. *Lee v. United States*, 242 A.2d 212, 1968 D.C. App. LEXIS 161 (App. 1968).

Police officer is not privileged to ignore facts which would give him reasonable cause to believe that a person is carrying a dangerous or deadly weapon. D.C. Code §§ 22-3204, 23-306. *Lee v. United States*, 242 A.2d 212, 1968 D.C. App. LEXIS 161 (App. 1968).

Where officer at early hour in morning saw defendant and another man talking to manager of motel and when officer approached they hurriedly moved away from door and officer received inconsistent answers to his inquiries to the men and officer noted that defendant was carrying bag containing large heavy object and when officer asked if there was gun in the bag, defendant started backing off and did not answer, officer had probable cause to arrest defendant for carrying pistol and to seize the gun. D.C. Code §§ 22-3204, 23-306. *Lee v. United States*, 242 A.2d 212, 1968 D.C. App. LEXIS 161 (App. 1968).

Where police officers noted automobile bearing license tags registered to a different make automobile and requested driver, without making any similar request of passenger, to follow them to precinct house and to go inside, passenger who accompanied the driver and accidentally revealed a loaded revolver in his pocket while inside precinct house had not theretofore been under arrest but gave police officer who observed the pistol sufficient grounds for arrest so that the arrest made by that officer was lawful and accompanying search was valid and evidence of pistol was accordingly not subject to suppression in prosecution for carrying a deadly weapon. D.C. Code § 22-3204. *Conyers v. United States*, 237 A.2d 838, 1968 D.C. App. LEXIS 126 (App. 1968).

Where police were seeking suspect who operated in one block area, robbing prostitutes and their customers, and defendant, who fitted description of suspect, gave evasive and irreconcilable answers to police questions after being stopped in area of robberies, whereupon he was arrested and search revealed a loaded pistol, and defendant admitted he was headed toward an automobile later found to contain prostitute and her customer, there was probable cause for arrest and defendant's motion to suppress evidence was properly denied. D.C. Code 1961, § 22-3204. *Franklin v. United States*, 204 A.2d 341, 1964 D.C. App. LEXIS 295 (App. 1964).

Police, who received information that there had been a holdup and robbery of a motel and who saw defendant, who was wearing outer clothing fitting description of one of robbers, in

a restaurant in vicinity in company of a known felon, and who observed a bulge under defendant's shirt resembling a pistol, had probable cause to arrest and search defendant, and pistol discovered in course of search was admissible in prosecution on charge of carrying a pistol. D.C. Code 1961, § 22-3204. *Teresi v. United States*, 187 A.2d 492, 1963 D.C. App. LEXIS 178 (App. 1963).

Where police officers about 1:30 a. m. observed defendant and his companion seated in parked automobile on dark street, and, as officers approached automobile, defendant and his companion "appeared to duck down," and one of the officers shined his flashlight into rear of automobile where defendant was sitting and noticed a shiny object which appeared to be a gun falling to floor near defendant's feet, and that officer drew his revolver and ordered defendant and his companion out of automobile, and shiny object on floor of automobile was in fact a fully loaded pistol, and on back seat officers found another loaded pistol in a bag, there was probable cause to justify arrest of defendant, and, in prosecution for carrying concealed weapons, trial court properly denied defendant's motion to suppress evidence, on ground that there was no probable cause for arrest and that search incidental thereto was unlawful. D.C. Code 1951, § 22-3204. *Emburgh v. U.S.*, 164 A.2d 342, 1960 D.C. App. LEXIS 257 (Cr.App. 1960).

Probable cause to justify arrest without warrant means more than a bare suspicion, and it exists where the facts and circumstances within officers' knowledge are sufficient in themselves to warrant a reasonable belief that an offense has been or is being committed. D.C. Code 1951, §§ 22-3204, 23-306(a, b). *Cormier v. U.S.*, 137 A.2d 212, 1957 D.C. App. LEXIS 325 (Cr.App. 1957).

Where officers were told during nighttime, by a young girl, that a man fitting general description had chased girl out of house with a gun, officers had probable cause to arrest defendant without warrant. D.C. Code 1951, §§ 22-3204, 23-306(a, b). *Cormier v. U.S.*, 137 A.2d 212, 1957 D.C. App. LEXIS 325 (Cr.App. 1957).

Law-abiding citizens should not be subjected to rash or tyrannical interference by police officers. D.C. Code 1951, § 22-3204. *Dickerson v. U.S.*, 120 A.2d 588, 1956 D.C. App. LEXIS 184 (Cr.App. 1956).

A citizen is not to be arrested or searched unless there is reasonable or probable cause for believing that he has committed a crime. D.C. Code 1951, § 22-3204. *Dickerson v. U.S.*, 120 A.2d 588, 1956 D.C. App. LEXIS 184 (Cr.App. 1956).

In determining whether police officer had probable cause for arrest and search of person, the court deals with probabilities, not ultimately demonstrable facts, nor with merely

technical conceptions. D.C. Code 1951, § 22-3204. *Dickerson v. U.S.*, 120 A.2d 588, 1956 D.C. App. LEXIS 184 (Cr.App. 1956).

In determining whether police officer had probable cause for arrest and search of person, which revealed concealed pistol, question was not whether person was proved guilty beyond reasonable doubt, but whether as practical matter, man of ordinary and reasonable caution would have reason to believe that person was carrying a gun. D.C. Code 1951, § 22-3204. *Dickerson v. U.S.*, 120 A.2d 588, 1956 D.C. App. LEXIS 184 (Cr.App. 1956).

Where officer observed person on street at 5:19 a. m., and when asked what he was doing on street at such hour, person answered evasively, and when turning to leave, officer's elbow bumped solid object on person's stomach, officer had probable cause for arrest and search which revealed concealed loaded pistol. D.C. Code 1951, § 22-3204. *Dickerson v. U.S.*, 120 A.2d 588, 1956 D.C. App. LEXIS 184 (Cr.App. 1956).

Civil actions.

Complaint which was brought by victim of shooting committed by officer of District of Columbia police department and which sought to hold police chief liable for negligence in hiring the officer and in failing to train and supervise him adequately and to hold the District of Columbia liable for negligence on the same grounds and vicariously liable for negligence of the police chief stated a cause of action against the District of Columbia and police chief on common-law grounds, notwithstanding fact that the officer was out of uniform at time of the alleged assault on plaintiff. D.C. Code § 22-3204. *Marusa v. District of Columbia*, 484 F.2d 828, 1973 U.S. App. LEXIS 8264 (C.A.D.C. 1973).

Public Vehicle Branch of District of Columbia Department of Transportation and Hackers' License Appeal Board did not abuse their discretion in refusing to renew license to drive taxicab on the ground that he lacked good moral character in that he was on probation after second conviction of carrying pistol without license at time he filed his application. D.C. Code 1981, §§ 22-3204, 47-2829(e). *Yirenkyi v. District of Columbia Hackers' License Appeal Bd.*, 520 A.2d 328, 1987 D.C. App. LEXIS 283 (1987).

Fact that taxicab driver possessed guns without license with no wrongful intent did not mean that Public Vehicle Branch of District of Columbia Department of Transportation and Hackers' License Appeal Board abused their discretion in refusing to renew license to drive a taxicab on the ground that driver lacked good moral character in that he was on probation after second conviction of carrying pistol without license at time he filed his application; proof

of intent to use gun for unlawful purpose was not element of crime of carrying a weapon without a license. D.C. Code 1981, §§ 22-3204, 47-2829(e). *Yirenkyi v. District of Columbia Hackers' License Appeal Bd.*, 520 A.2d 328, 1987 D.C. App. LEXIS 283 (1987).

It was not an abuse of discretion for Public Vehicle Branch of District of Columbia Department of Transportation and Hackers' License Appeal Board to refuse to renew license to drive taxicab on ground that driver lacked good moral character in that he was on probation after second conviction of carrying pistol without license at time he filed application, although driver contended that when he purchased first pistol he "overlooked" and "misinterpreted" registration papers, mistakenly believing that gun salesman had registered pistol and that when he purchased second gun, he thought he fell under "place of business" exception. D.C. Code 1981, §§ 22-3204, 47-2829(e). *Yirenkyi v. District of Columbia Hackers' License Appeal Bd.*, 520 A.2d 328, 1987 D.C. App. LEXIS 283 (1987).

Conclusiveness of adjudication.

Collateral estoppel did not bar prosecution for federal offense of carrying pistol without license after previous conviction for violation of regulation requiring registration of same pistol, since different proof was required for the offenses and there were no inconsistencies between convictions. D.C. Code § 22-3204. *United States v. Wilder*, 463 F.2d 1263, 1972 U.S. App. LEXIS 9538 (C.A.D.C. 1972).

Defendant, who was simultaneously tried by a jury on statutory charge of carrying a pistol without a license and by the judge on police regulatory charges of possessing an unregistered firearm and possessing ammunition therefor, failed to establish that the judge was collaterally estopped to convict on the regulatory charges after the jury acquitted on the statutory charge, where neither the record nor the arguments of defendant established that the issue of knowledge or intent under the statute is necessarily identical to that involved in a prosecution of the regulatory offenses, or that doubt as to intent led the jury to render its verdict in favor of defendant. D.C. Code § 22-3204. *Copening v. United States*, 353 A.2d 305, 1976 D.C. App. LEXIS 491 (1976).

Where defendant, in a single proceeding, was simultaneously tried by a jury on statutory charge of carrying a pistol without a license and by the judge on police regulatory charges of possessing an unregistered firearm and possessing ammunition therefor, there was no "prior adjudication" which would mandate application of the collateral estoppel doctrine, even though the jury announced its acquittal verdict on the statutory charge just before the judge pronounced judgment of conviction on the

regulatory offenses. D.C. Code § 22-3204; U.S. Const. Amend. 5. *Copening v. United States*, 353 A.2d 305, 1976 D.C. App. LEXIS 491 (1976).

United States district court ruling, in prosecution for narcotics violation, suppressing certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, in which defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. D.C. Code §§ 11-521, 11-963, 22-1502, 22-3204, 22-3214; 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174. *Burrell v. United States*, 252 A.2d 897, 1969 D.C. App. LEXIS 244 (App. 1969).

Conduct of trial.

In prosecution for assault with intent to kill while armed and carrying dangerous weapon, court's comment, taken in context, was not objectionable as withdrawing from jury any issue affecting determination of guilt or innocence. 18 U.S.C. § 294(d); D.C. Code §§ 22-501, 22-3202, 22-3204. *United States v. Craven*, 458 F.2d 802, 1972 U.S. App. LEXIS 10987 (C.A.D.C. 1972).

In view of examination of prospective jurors and instructions to jurors, trial court did not abuse discretion in denying continuance of prosecution for carrying unlicensed pistol on ground of publicity regarding gun control, assassination of senator and other events concomitant with trial. D.C. Code § 22-3204. *United States v. Clemons*, 440 F.2d 205, 1970 U.S. App. LEXIS 6320 (C.A.D.C. 1970), writ of certiorari denied by 401 U.S. 945, 91 S. Ct. 959, 28 L. Ed. 2d 227, 1971 U.S. LEXIS 3030 (1971).

In prosecution for first-degree felony-murder while armed, second-degree burglary while armed, carrying a pistol without a license, second-degree burglary and grand larceny, pre-trial publicity concerning defendant's prior arrests and criminal history and cache of property recovered from defendant's home that had probable connections with similar offenses was not of such an extreme nature as to deprive defendant of a fair trial. D.C. Code 1981, §§ 22-1801(b), 22-2201, 22-2401, 22-3202, 22-3204; U.S. Const. Amend. 6. *Welch v. United States*, 466 A.2d 829, 1983 D.C. App. LEXIS 484 (1983).

Trial court, in prosecution of defendant for armed robbery and carrying a pistol without a license, did not err in refusing to order the recusal of the prosecutor. D.C. Code §§ 22-2901, 22-3201, 22-3204. *Harling v. United*

States, 372 A.2d 1011, 1977 D.C. App. LEXIS 472 (1977).

Demonstration of way razor might be used as weapon made by officer during trial was relevant to issue of whether razor was dangerous or deadly weapon, and was not prejudicial to defendant. D.C. Code § 22-3204. *Clarke v. United States*, 256 A.2d 782, 1969 D.C. App. LEXIS 310 (App. 1969).

Government lacked affirmative duty to make paraffin or fingerprint tests in regard to pistol involved in prosecution for carrying pistol without a license, and failure to do so was not error in absence of request that tests be made or showing of prejudice from failure to make tests. D.C. Code §§ 22-3204, 22-3206. *Williams v. United States*, 237 A.2d 539, 1968 D.C. App. LEXIS 122 (App. 1968).

Constitutional rights of defendant.

Government's failure to perform fingerprint analysis on pistol found in paper bag on passenger's side of transmission hump of defendant's automobile and within reach of driver could not be found to have denied defendant due process by keeping from defendant, who police officers said was alone in vehicle at time of arrest but who asserted that a passenger had alighted on approach of police, evidence material to guilt where defendant never sought to introduce fingerprint matter at trial and did not seek to have Government perform a fingerprint analysis or attempt to obtain such analysis himself. D.C. Code § 22-3204. *United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Defendant's conviction for carrying a concealed pistol without a license on the public streets did not violate his Second Amendment right to keep and bear arms. *Gamble v. United States*, 30 A.3d 161, 2011 D.C. App. LEXIS 615 (2011).

Trial court did not abuse its discretion and violate the Sixth Amendment by disqualifying for an actual conflict attorney who defendant attempted to add to his defense team shortly before trial, in prosecution of defendant for first-degree premeditated murder while armed and related weapons charges, where attorney had represented at grand jury friend of defendant who had provided a gun to defendant and consented to police recording a conversation with defendant, and, though attorney claimed he did not remember any details of his representation of defendant's friend, attorney may have remembered information during trial and could have been forced to choose between using the information for defendant's advantage or refrain from using it to defendant's disadvantage. *Wilson v. United States*, 995 A.2d 174, 2010 D.C. App. LEXIS 223 (2010).

Defendant failed to establish factual basis for claim that government engaged in uneven en-

forcement of statute criminalizing carrying a pistol without a license in violation of equal protection clause. *Austin v. United States*, 847 A.2d 391, 2004 D.C. App. LEXIS 163 (2004), writ of certiorari denied by 543 U.S. 895, 125 S. Ct. 185, 160 L. Ed. 2d 161, 2004 U.S. LEXIS 5267, 73 U.S.L.W. 3213 (2004).

In prosecution for second degree murder, attempted robbery, assault with intent to kill while armed, carrying of pistol without a license, assault with intent to kill while armed, and obstruction of justice, defendant was not denied a fair trial when court admitted evidence concerning threats he had uttered to witnesses but failed to instruct jurors that their consideration of such threats was to be limited only to its showing of defendant's consciousness of guilt. D.C. Code 1981, §§ 22-501, 22-703, 22-2902, 22-3202, 22-3204. *Smith v. United States*, 470 A.2d 315, 1983 D.C. App. LEXIS 550 (1983), writ of certiorari denied by 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344, 1985 U.S. LEXIS 988, 53 U.S.L.W. 3598 (1985).

In proceeding in which defendant was convicted of second-degree murder while armed and of carrying pistol without license, Government, which had furnished defendant with a copy of a declarant's statement that specified individual other than defendant had shot victim and had furnished the address and telephone number of declarant, did not deny defendant due process by failing to remain apprised of whereabouts of declarant and to maintain his availability. D.C. Code §§ 22-2403 to 22-3202, 22-3204; U.S. Const. Amends. 6, 14. *Jackson v. United States*, 424 A.2d 40, 1980 D.C. App. LEXIS 416 (1980), writ of certiorari denied by 454 U.S. 1127, 102 S. Ct. 979, 71 L. Ed. 2d 116, 1981 U.S. LEXIS 3006, 50 U.S.L.W. 3487 (1981).

Right of defendant to a fair trial, his Sixth Amendment right to counsel, and the use of compulsory process for witnesses, did not require finding that Government's failure to extend immunity to defendant's uncle, who allegedly owned pistol found in possession of defendant, who was convicted of carrying a pistol without a license and of unlawful possession of marihuana, amounted to a deprivation of due process of law. D.C. Code §§ 22-3204, 33-402; U.S. Const. Amend. 6. *Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

Construction and application.

The statute prohibiting the carrying of a pistol without a license except in a dwelling house or place of business must be given a strict construction. D.C. Code 1940, § 22-3204. *Brown v. U.S.*, 66 A.2d 491, 1949 D.C. App. LEXIS 200 (Cr.App. 1949).

Deletion of the language which exempted carrying a pistol without a license in a person's residence, *inter alia*, from the present version of subsection (a), was designed to expand the scope of this section's coverage in its attempt to address the devastating effects the rampant use of pistols is having in the District of Columbia. The consequence of the omission being that carrying a pistol without a license in one's residence is now a violation of this section. *United States v. Bigelow*, 123 WLR 401 (Super. Ct. 1995).

Construction with other statutes.

Indictment containing five counts charging use of firearm during drug trafficking crime or crime of violence was not multiplicitous with the District of Columbia counts charging possession of a firearm during a crime of violence, since neither charge was a lesser included offense of the other; predicate offenses charged were Violent Crimes in Aid of Racketeering (VICAR) and first degree murder under D.C. law, VICAR required showing of participation in racketeering activity which D.C. charges did not and D.C. charge required proof of either premeditation or specific intent which VICAR did not. *United States v. Mahdi*, 598 F.3d 883, 2010 U.S. App. LEXIS 6493 (C.A.D.C. 2010), writ of certiorari denied by 131 S. Ct. 484, 178 L. Ed. 2d 306, 2010 U.S. LEXIS 7964, 79 U.S.L.W. 3227 (U.S. 2010).

Government is not required to bring all knife cases under code section prohibiting possession of knife with blade longer than three inches; and defendant who carried openly or concealed on or about his person a "pocket knife" which had a black outer case and a blade three-eighths of an inch wide and four and one-quarter inches from shank to tip was properly prosecuted under code section forbidding any person to carry either openly or concealed on or about his person a deadly or dangerous weapon capable of being so concealed. D.C. Code 1951, §§ 22-3204, 22-3214 and subd. (b). *Degree v. U.S.*, 144 A.2d 547, 1958 D.C. App. LEXIS 265 (Cr.App. 1958).

The 1953 Act specifically prohibiting possession of knife with intent to use unlawfully against another was not intended to cover the whole subject matter of knives in District of Columbia, in the sense of repealing deadly weapon statute which required no proof of unlawful intent, and hence information alleging violation of the older statute was sufficient though it specified knife as the deadly weapon and did not allege intent to use knife unlawfully against another. D.C. Code 1951, §§ 22-3204, 22-3214(b). *Degree v. U.S.*, 144 A.2d 547, 1958 D.C. App. LEXIS 265 (Cr.App. 1958).

Discovery.

Defendant was not entitled, in prosecution for possessory drug and weapons offenses, to

disclosure of confidential informant's identity; informant's sighting of guns in apartment as much as six days earlier provided only conjecture as to who owned or possessed them when found at time of search, and defendant proffered nothing to suggest that anyone known to informant was exercising exclusive dominion or control, to the exclusion of defendant, over the gun and cocaine found in defendant's immediate company. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Testimony of arresting officer, who apparently lost note on which he jotted down assault victim's description of assailant, was not, in prosecution for carrying a pistol without a license, inadmissible under the Jencks Act, since the Act imposes its sanction on the testimony of the witness who gave the statement rather than on the one who received it; moreover, receipt of the officer's testimony did not constitute plain error in light of his inability to produce the note, since the officer testified that the arrest of defendant was based on victim's on-the-scene identification. D.C. Code § 22-3204; 18 U.S.C. §§ 3500, 3500(d). *Hardy v. United States*, 316 A.2d 867, 1974 D.C. App. LEXIS 389 (1974).

District and prosecuting attorney powers and duties.

The United States Attorney has responsible role in implementing possibility that crimes of violence may be deterred by visiting severe punishment upon convicted felon later found carrying deadly weapon. D.C. Code 1961, § 22-3204. *Epperson v. United States*, 371 F.2d 956, 1967 U.S. App. LEXIS 7906 (C.A.D.C. 1967).

Defendant was not entitled to mistrial or continuance of trial on weapons charges due to alleged Brady violation of government in not providing name and grand jury statement of witness who said that she did not see a gun in defendant's car; defendant knew, as early as the date of his arrest, that witness was in his car, and once defendant received the statement and the name of the witness, he delayed in attempting to contact her. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Even assuming that witness's statement, that she did not see a gun in defendant's car, was material, government's failure to disclose statement, in prosecution of defendant on weapons charges, did not violate due process under Brady; nondisclosure was not so serious that there was a reasonable probability that the suppressed evidence would have produced a different verdict, where two police officers testified that they saw the gun in plain view, and there was no defense showing that witness was in a position to see the gun while occupying the front passenger seat in the car. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

In view of 1972 letter from corporation counsel granting standing permission for United States attorney to prosecute violations of police regulations prohibiting possession of unregistered firearms and possession of ammunition therefor if such charges accompany a charge of violating statute prohibiting the carrying of a pistol without a license, the corporation counsel is not required in each case to give formal consent on the record for the United States attorney to prosecute on the regulatory charges. D.C. Code §§ 22-3204, 23-101(d). *Copening v. United States*, 353 A.2d 305, 1976 D.C. App. LEXIS 491 (1976).

Prosecutor had authority to charge defendant, a felon who possessed an unlicensed pistol while not in his dwelling or on his land, under felony-repeater provisions rather than under misdemeanor statute and by doing so did not deny right to equal protection. D.C. Code §§ 22-3203(2), 22-3204; U.S. Const. Amend. 5. *Palmore v. United States*, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

Double jeopardy.

Conviction under federal statute criminalizing carrying of firearm during or in relation to a drug trafficking offense or crime of violence, and District of Columbia statute criminalizing possession of firearm during commission of crime of violence, did not violate Double Jeopardy Clause; federal provision required commission of retaliatory offense, while District of Columbia provision did not, and conversely District of Columbia provision required commission of assault, as defined therein, while federal provision did not, and there was no indication that Congress intended both provisions to apply. U.S. Const. Amend. 5; 18 U.S.C. § 924(c); D.C. Code 1981, § 22-3204(b). *United States v. McLaughlin*, 164 F.3d 1, 1998 U.S. App. LEXIS 31488 (C.A.D.C. 1998), writ of certiorari denied by 526 U.S. 1079, 119 S. Ct. 1485, 143 L. Ed. 2d 567, 1999 U.S. LEXIS 2792, 67 U.S.L.W. 3642 (1999).

There was no double jeopardy bar to dual convictions under federal statute governing offense of receiving a pistol in interstate commerce with serial number removed and either statute governing offense of carrying a firearm during commission of a felony or District of Columbia criminal code governing offense of carrying a firearm without a license. D.C. Code § 22-3204; 18 U.S.C. §§ 921 et seq., 922(a-m, d, h, k), 924(c)(2); U.S. Const. Amend. 5. *United States v. Dorsey*, 591 F.2d 922, 1978 U.S. App. LEXIS 6845 (C.A.D.C. 1978).

Double jeopardy rule did not prevent prosecution for unlicensed possession of pistol, in violation of District of Columbia Code, although defendant had earlier been convicted of viola-

tion of District regulation requiring registration of same pistol, although offenses arose from single arrest, since federal offense concerns personal qualifications of individual while regulation concerns firearm in question and required proof is not the same. D.C. Code § 22-3204; U.S. Const. Amend. 5. *United States v. Wilder*, 463 F.2d 1263, 1972 U.S. App. LEXIS 9538 (C.A.D.C. 1972).

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim, was not put twice in jeopardy for same offense by prosecution upon two counts, for assault with deadly weapon, and also for carrying concealed unlicensed weapon, since element of proof in second count, that gun was unlicensed, was not necessary in proof of assault charge. D.C. Code 1951, §§ 22-3204, 22-3215. *Kendrick v. U.S.*, 238 F.2d 34, 1956 U.S. App. LEXIS 3983 (C.A.D.C. 1956).

Conviction of defendant of the federal offense of using and carrying a firearm during a crime of violence, and of District of Columbia offense of possessing a firearm while committing a crime of violence or dangerous offense, did not violate double jeopardy. *United States v. Vargas*, 39 Fed.Appx. 612, 2002 U.S. App. LEXIS 11464 (C.A.D.C. 2002), writ of certiorari denied by 537 U.S. 1038, 123 S. Ct. 573, 154 L. Ed. 2d 459, 2002 U.S. LEXIS 8611, 71 U.S.L.W. 3352 (2002).

Convictions for possession of a prohibited weapon with the intent to use it unlawfully (PPW) and possession of a firearm during the commission of a crime of violence (PFCV) did not violate double jeopardy, as each crime required proof of an element that the other did not. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

Simultaneous violation of statute defining crime of possession of a firearm during a dangerous crime and statute enhancing penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon does not constitute a single offense for double jeopardy purposes, and resulting convictions do not merge; second statute requires proof that perpetrator exercise a degree of dominion and control not required for conviction under first statute; also, first statute requires proof that instrument possessed was either a firearm or an imitation firearm, while second statute proscribes any instrument found to be a dangerous weapon, which can include but is not limited to firearms and their imitations; thus, each provision requires proof of a fact not required under the other. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Thomas v. United States*, 602 A.2d 647, 1992 D.C. App. LEXIS 23 (1992).

Reversal of defendant's convictions of manslaughter while armed and of carrying pistol without license did not preclude new trial on

same charges, where reversal was based on prosecutorial misconduct and not on evidentiary insufficiency and was unrelated to defendant's guilt or innocence. U.S. Const. Amend. 5; D.C. Code 1981, §§ 22-2405, 22-3202, 22-3204. *Coreas v. United States*, 585 A.2d 1376, 1991 D.C. App. LEXIS 30 (1991), writ of certiorari denied by 502 U.S. 855, 112 S. Ct. 167, 116 L. Ed. 2d 130, 1991 U.S. LEXIS 4310, 60 U.S.L.W. 3261 (1991).

Including evidence wrongfully admitted in violation of the confrontation clause, evidence was sufficient to withstand motion for judgment of acquittal; therefore, the double jeopardy clause did not prevent retrial after conviction was reversed based on the erroneous admission of evidence, in prosecution for felony-murder, armed robbery, and carrying a pistol without a license. D.C. Code 1981, §§ 22-2401, 22-2901, 22-3202, 22-3204; U.S. Const. Amends. 5, 6. *Thomas v. United States*, 557 A.2d 599, 1989 D.C. App. LEXIS 61 (1989).

Fact that defendant was acquitted on count of carrying a pistol without a license did not bar conviction for possession of unregistered firearm. D.C. Code 1978 Supp. § 6-1811(a); D.C. Code 1981, § 22-3204. *Moore v. U.S.*, 468 A.2d 1342, 1983 D.C. App. LEXIS 529 (1983).

Plea of guilty to carrying pistol without license would not have made subsequent prosecution of defendant for possession of unregistered firearm and possession of ammunition for unregistered firearm violative of double jeopardy; nor would subsequent prosecution be barred by doctrine of collateral estoppel. D.C. Code § 22-3204. *Alston v. United States*, 383 A.2d 307, 1978 D.C. App. LEXIS 413 (1978).

Although defendant did not affirmatively consent to Government's oral motion to dismiss original second-degree murder indictment, which motion was made after first trial was aborted and indictment for first-degree murder filed, such dismissal did not act as an acquittal barring retrial on subsequent second-degree murder indictment, on ground that double jeopardy attached in the first trial before mistrial was declared due to defense error in opening remarks; dismissal of first indictment was not an acquittal since effect of request for a mistrial nullified any attachment of jeopardy and Government was free to proceed as though no trial had ever begun. D.C. Code §§ 22-2401, 22-2403, 22-3204. *Jamison v. United States*, 373 A.2d 594, 1977 D.C. App. LEXIS 477 (1977).

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosequere it and bring new charge of carrying a pistol without a li-

cense, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. D.C. Code §§ 22-3203, 22-3204, 22-3214. *Newman v. United States*, 239 A.2d 152, 1968 D.C. App. LEXIS 134 (App. 1968).

Examination of witnesses.

— Competency and capacity, examination of witnesses.

Prosecutor who called robbery victims to testify despite victims' expressed inability to recall events was entitled to continue questioning victims in order to probe memory and test recollection in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

In prosecution for carrying a dangerous weapon and possession of a prohibited weapon, trial court did not abuse discretion in refusing to order a psychiatric examination of prosecution witness prior to ruling that she was competent to testify. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

— Credibility and impeachment, examination of witnesses.

Where offenses at issue were committed before effective date of amendment to District of Columbia impeachment statute mandating admission into evidence of certain prior convictions of a defendant if he takes the stand, as well as admission of such offenses as to witnesses, such retroactive application was unconstitutional as a prohibited ex post facto law. U.S. Const. art. 1, § 9, cl. 3; D.C. Code §§ 14-305, 22-3204. *United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Had defendant taken stand in prosecution for armed robbery, assault with dangerous weapon, and carrying dangerous weapon without license, evidence of prior conviction for impersonating owner of federal check would have been admissible for impeachment purposes. D.C. Code §§ 22-502, 22-2901, 22-3204. *United States v. Moore*, 459 F.2d 1360, 1972 U.S. App. LEXIS 11942 (C.A.D.C. 1972).

Affidavit of complaining witness' girlfriend provided sufficient factual predicate for defendants to ask witness impeaching questions, in prosecution for armed carjacking and weapons offenses, about witness' alleged prior conduct in loaning out his car and then falsely reporting it stolen. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-2903(b), 22-3204(a, b). *Brown v. United States*, 726 A.2d 149, 1999 D.C. App. LEXIS 31 (1999), writ of certiorari denied by 528 U.S.

1130, 120 S. Ct. 967, 145 L. Ed. 2d 838, 2000^{*} U.S. LEXIS 792, 68 U.S.L.W. 3460 (2000), writ of certiorari denied by 528 U.S. 1130, 120 S. Ct. 967, 145 L. Ed. 2d 838, 2000 U.S. LEXIS 793, 68 U.S.L.W. 3460 (2000).

Through cross-examination of witnesses in prosecution for felony-murder and first-degree burglary on subject of their plea agreement, defense counsel suggested that witnesses had a motive to lie at trial, and thereby triggered application of rules which permit admission of prior consistent statements, for purposes of determining whether such prior consistent statements were properly admitted. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

Trial court in prosecution for felony-murder and first-degree burglary erred in admitting previous statements of three prosecution witnesses during redirect to rehabilitate their testimony after defense counsel suggested that witnesses had a motive to lie at trial, where prior statements were made to law enforcement officials at a time when witnesses were under arrest and knew that they could be tried for first-degree murder, and thus, had a motive to lie to the detective who took the statements. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

In prosecution for attempted robbery, burglary, assault, and murder, trial court did not err in denying defendant's pretrial motion to limit his impeachment to fact but not nature of his prior convictions. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2401, 22-2402, 22-3202, 22-3204. *Adams v. United States*, 466 A.2d 439, 1983 D.C. App. LEXIS 483 (1983).

In prosecution for carrying a dangerous weapon and possession of a prohibited weapon, there was no error in trial court's refusal to permit additional inquiry into complainant's drug habits in the months before and after the incident in question. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

Defense counsel, in prosecution for assault with a dangerous weapon, should have been allowed to impeach the prosecution's case by cross-examining one of the three prosecution witnesses as to his juvenile status, viz., the fact that he was on probation as a juvenile for a robbery conviction, since the three witnesses, two brothers and their cousin, were as one because of their unity of testimonial interest, to wit, their interest in keeping the one brother's

probation from being revoked, and since the three may have thought that they themselves would be suspects, for any version of the shooting tending to make defendant's activities appear to have been in self-defense would concomitantly point the finger of accusation at the three witnesses. D.C. Code §§ 22-502, 22-3204; U.S. Const. Amend. 6. *Gillespie v. United States*, 368 A.2d 1136, 1977 D.C. App. LEXIS 415 (1977).

Defendant's prior conviction of carrying a pistol without a license was within purview of statute providing that conviction of a crime is admissible for impeachment purposes if crime involved dishonesty or false statement. D.C. Code §§ 14-305, 14-305(b)(1)(B), 22-3204. *Williams v. United States*, 337 A.2d 772, 1975 D.C. App. LEXIS 384 (1975).

— Cross examination of witnesses.

Impeaching defendant by asking him, over objection, whether he had previously pled guilty to a charge of carrying a pistol without a license and a charge of possession of heroin was impermissible under federal rule, since the offenses about which defendant was cross-examined were misdemeanors not punishable by death or imprisonment in excess of one year, and since, an intent to deceive or defraud not being an element of either, they did not involve "dishonesty or false statement." Federal Rules of Evidence, rule 609(a), 18 U.S.C.; D.C. Code §§ 22-3204, 33-402. *U.S. v. Millings*, 535 F.2d 121, 1976 U.S. App. LEXIS 11377 (C.A.D.C. 1976).

A defendant's right to pursue a particular line of cross-examination is circumscribed by general principles of relevance. *Bruce v. United States*, 820 A.2d 540, 2003 D.C. App. LEXIS 151 (2003).

Trial court did not abuse its discretion in curtailing scope of defendant's cross-examination of arresting officer regarding personnel regulations and practices, in prosecution for carrying pistol without license, possession of unregistered firearm, unlawful possession of ammunition, possession of phencyclidine and possession of marijuana; defendant proffered no facts or follow-up questions which would have supported theory that officer's own personnel record was such that he had any incentive to misrepresent circumstances justifying arrest. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204, 33-541(d). *Deneal v. United States*, 551 A.2d 1312, 1988 D.C. App. LEXIS 219 (1988).

In prosecution which resulted in conviction of two defendants for felony-murder, two counts of armed robbery, assault with intent to kill while armed, and other lesser crimes, trial court did not abuse its discretion by restricting cross-examination of surviving victim, which was intended to show that victim had won money in

gambling activities from a number of persons other than defendants and that these other persons may have had a motive to rob victims, since questioning had little bearing on credibility of victim's identification of defendants and trial court in fact gave defense counsel considerable leeway to explore collateral issue of surviving victim's gambling activities before restricting such questioning. D.C. Code 1973, §§ 22-3204, 22-3212. *Ruth v. United States*, 438 A.2d 1256, 1981 D.C. App. LEXIS 395 (1981).

In prosecution for carrying a dangerous weapon and possession of prohibited weapon, trial court correctly disallowed cross-examination of prosecution witness regarding her hospitalization several years earlier, in that such issue was not relevant to her testimony. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

The trial court's refusal to allow defendant to cross-examine eyewitness as to witness's possible bias against defendant violated defendant's Confrontation Clause rights; defendant's proffer was sufficient to establish a reasoned suspicion of bias, given that defendant, witness, and witness's son were all involved in a shooting incident in which defendant was the target, defendant was running away from the shooter, the shooter shot witness's son and wounded him, and defendant never testified against the shooter of witness's son, and the entire case against defendant was based on the testimony of witness. *Blades v. United States*, 25 A.3d 39, 2011 D.C. App. LEXIS 375 (2011).

— Cumulative evidence, examination of witnesses.

In prosecution for carrying a dangerous weapon and possession of a prohibited weapon, trial court did not err in excluding defendant's medical records, which he sought to introduce in support of his claim of self-defense, in that defendant had testified, without contradiction, that he suffered from a bad back and had received instructions from a doctor to avoid straining it, and any additional evidence would have been merely cumulative. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

— Evidence in rebuttal, examination of witnesses.

Where defendant, who was convicted of carrying a pistol without a license, and of unlawful possession of marihuana, testified that he had been beaten by police and desired hospitalization, Government could rebut such testimony with evidence that defendant's purpose of seeking hospital treatment was that he was a heroin addict, and admission of such evidence did not require a mistrial, as had occurred on

previous occasion when such evidence was admitted, where tactical choice of defense counsel was in all probability to proceed. D.C. Code §§ 22-3204, 33-402; U.S. Const. Amend. 6. *Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

— In general.

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, requiring counsel for one defendant to ask a more precise question than question counsel asked a witness for prosecution as to whether such witness was convicted several times of prostitution during specified years was within discretion of trial court. D.C. Code 1940, §§ 22-2901, 22-3204; 18 U.S.C. § 371. *Bundy v. U.S.*, 193 F.2d 694, 1951 U.S. App. LEXIS 2938 (C.A.D.C. 1951).

Prosecutor who asked detective open-ended question leading to testimony as to identification made by witness that had not testified about identification and whose open-ended question led to detective's testimony in violation of court order was not sufficiently cautious and injected error into trial for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's eight leading questions which were put to victims despite victims' inability to recall events of robbery were improper in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's leading questions which were asked despite victims' inability to recall events, but which did not constitute only direct evidence against defendant, did not violate defendant's Sixth Amendment right to confront witnesses in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204; U.S. Const. Amends. 5, 6. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

— Reopening case for further evidence, examination of witnesses.

In prosecution which resulted in conviction for carrying a pistol without a license and other crimes, when Government failed to present

evidence that defendant lacked license to carry pistol during its case-in-chief, trial court did not err in permitting Government to reopen its case and present evidence as to whether he possessed license for a gun. D.C. Code 1973, § 22-3204. *Ruth v. United States*, 438 A.2d 1256, 1981 D.C. App. LEXIS 395 (1981).

Harmless or reversible error.

— Admission of evidence, harmless or reversible error.

Any impeaching quality resulting from identification and display in front of jury, over objection and against judge's doubts and so major part of government's case, of three dangerous weapons, which had been taken from defendant's companions when they were arrested and which were not charged to possession of defendant, indicted for carrying dangerous weapon without a license in violation of District of Columbia code, was outweighed by its prejudicial effect. D.C. Code § 22-3204. *Macklin v. United States*, 410 F.2d 1046, 1969 U.S. App. LEXIS 13128 (C.A.D.C. 1969).

Fact that there was ample testimony by two police officers of defendant's possession of dangerous weapon without a license in violation of District of Columbia code did not render harmless identification and display in front of jury of three dangerous weapons which were taken from defendant's companions at time they were arrested and which were not charged to defendant's possession. D.C. Code § 22-3204. *Macklin v. United States*, 410 F.2d 1046, 1969 U.S. App. LEXIS 13128 (C.A.D.C. 1969).

When deputy police chief's certificate that search of police department records disclosed that defendant had no license to carry pistol was admitted in prosecution for carrying weapon in violation of statute, defendant was not prejudiced by failure to produce certificate that police chief had custody of records of pistol licenses, since judicial notice could be taken that custody of the records was in the police chief. D.C. Code 1961, §§ 22-3204, 22-3206; Fed.Rules Crim.Proc. rule 27, 18 U.S.C.; Fed.Rules Civ.Proc. rule 44(b), 18 U.S.C. *Smith v. United States*, 353 F.2d 838, 1965 U.S. App. LEXIS 4063 (C.A.D.C. 1965), writ of certiorari denied by 384 U.S. 910, 86 S. Ct. 1350, 16 L. Ed. 2d 362, 1966 U.S. LEXIS 1874 (1966), writ of certiorari denied by 384 U.S. 974, 86 S. Ct. 1867, 16 L. Ed. 2d 684, 1966 U.S. LEXIS 1448 (1966).

Erroneous admission of out-of-court videotaped admissions and plea statement of non-testifying codefendants reasonably contributed to guilty verdict for defendant on charges of murder, assault, and possession of a firearm, and thus, was not harmless; prosecution stated that jury should consider deciding conspiracy count first, because if defendant was guilty of

conspiracy, then he was guilty of substantive offenses, defendant's membership in conspiracy was established by videotape and plea statements, and prosecution used statements to establish motive for defendant's commission of substantive offenses. *Williams v. United States*, 858 A.2d 978, 2004 D.C. App. LEXIS 455 (2004).

Assuming, arguendo, that trial court erred in admitting evidence of bullet-proof vest that defendant was wearing when arrested, error was harmless, given strength of Government's case, in prosecution for various weapons-related offenses including possession of prohibited weapon; two police officers testified to seeing defendant in possession of a machine-gun type weapon, defendant fled from approaching police cruiser, police found weapon that looked like machine gun in path of defendant's flight soon after his arrest, and lack of moisture on top-side of weapon indicated it had been recently discarded. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3204(a), 22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

Any harm that may have resulted from shared assumption of prosecutor, defendant's trial counsel, and trial court that certificate of nonregistration of firearm was certificate of nonlicensing of pistol was not prejudicial, where officer testified that he had checked licensing records and determined that defendant was not authorized to carry a pistol. D.C. Code 1981, § 22-3204. *Willingham v. United States*, 467 A.2d 742, 1983 D.C. App. LEXIS 510 (1983).

Conviction of carrying a pistol without a license, which pistol was seized during search pursuant to narcotics warrant, was not required to be reversed because warrant office clerk, without assistance or instructions from applicant, crossed out words "at any time of the day or night," with form as completed authorizing a daytime search and with search occurring approximately one hour following end of civil twilight, especially as there was probable cause for narcotics search and issuing judge failed to detect the limiting language. D.C. Code 1973, §§ 22-3204, 33-414(h). *Hines v. United States*, 442 A.2d 146, 1982 D.C. App. LEXIS 295 (1982).

In prosecution for carrying pistol without a license, any error resulting from testimony indicating that pistol in question was owned by one other than defendant was harmless where trial judge immediately cautioned jury that defendant was not charged with stealing pistol but only with possession of it without a license. D.C. Code § 22-3204. *Anderson v. United States*, 326 A.2d 807, 1974 D.C. App. LEXIS 294 (1974), writ of certiorari denied by 420 U.S. 978, 95 S. Ct. 1405, 43 L. Ed. 2d 659, 1975 U.S. LEXIS 966 (1975).

Government's introduction, in its case-in-chief of .22-caliber pellet pistol found on search of rear seat passenger when police stopped automobile occupied by defendant and two others and similar pistols found under driver's seat, in addition to admission of .32-caliber pistol found under seat where defendant had been sitting, with no limiting instruction being given, was prejudicial and required new trial on charge of carrying a pistol without a license, notwithstanding government's contention that purpose of offering additional pistols was to enhance showing that pistol found under seat occupied by defendant had in fact been possessed by him. D.C. Code § 22-3204. *Coleman v. United States*, 295 A.2d 896, 1972 D.C. App. LEXIS 268 (1972).

In view of overwhelming evidence that the particular address claimed by defendant to be his dwelling house was not his dwelling house, any error with respect to whether defendant waived any of his constitutional rights to remain silent and to counsel before being questioned as to his residence was harmless in prosecution for violation of District of Columbia statute prohibiting the carrying of an unlicensed pistol except in one's dwelling house. D.C. Code §§ 16-706, 22-3204, 22-3215; U.S. Const. Amend. 5. *Brewster v. United States*, 271 A.2d 409, 1970 D.C. App. LEXIS 359 (App. 1970).

— Arguments and conduct of counsel, harmless or reversible error.

Government's suggestion, during its summation, of corroboration of nature of gun placement within reach of defendant, charged with carrying a pistol without a license, was not improper since it was supported at least by one arresting officer's discovery of bag, which was located on passenger's side of transmission hump of defendant's automobile but within reach of driver and from which butt of loaded gun was protruding; however, any error in such regard would not have amounted to reversible error. D.C. Code § 22-3204. *United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Prosecutor's closing and rebuttal arguments seeking to draw an analogy between crime charged against defendant and those involving defendants in other cases involving heinous crimes were so highly prejudicial as to require reversal. D.C. Code §§ 22-2403, 22-3204. *United States v. Phillips*, 476 F.2d 538, 1973 U.S. App. LEXIS 9930 (C.A.D.C. 1973).

Prosecutor's "knights of the round table" analogy in closing argument, when viewed in context, was tied sufficiently to discussion of evidence and did not rise to level of transgression warranting reversal of convictions for various weapons-related offenses including possession of prohibited weapon. D.C. Code 1981,

§§ 6-2311(a), 6-2361, 22-3204(a), 22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

Prosecutor's improper, incomplete missing witness argument which claimed that only defendant's sister and girl friend supported alibi defense of being at party with several other potential witnesses, which trial court ordered prosecutor to abandon, and which was made in context of strong evidence against defendant did not substantially sway jury and did not prejudice defendant in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Even if prosecutor's statement that there was no death penalty in the city anymore, made during closing argument in prosecution for felony-murder and first-degree burglary, was improper, any error was harmless, in view of government's strong case against defendants coupled with court's instructions that the jury disregard the comment and fact that jurors eventually were instructed by the court, at defense's request, on penalties for various offenses, including first-degree murder. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

Where jury was apprised of circumstances sufficiently probative to allow them to conclude beyond reasonable doubt that razor was being carried as deadly or dangerous weapon, defendant's conviction did not turn in any significant degree on remarks in closing argument by government counsel which attempted to place jury in shoes of victims or likely victims of crime, and no reversal was required. D.C. Code § 22-3204. *Clarke v. United States*, 256 A.2d 782, 1969 D.C. App. LEXIS 310 (App. 1969).

In prosecution for carrying deadly or dangerous weapon, prosecutor did not comment on defendant's failure to testify and there was no error requiring reversal where the comment was that defendant "spoke very loud and clear as to this knife. And when was that? That was when he saw the officer. Because, what did he do? He took it from the small of his back and he threw it to the ground, trying to get rid of it". D.C. Code § 22-3204. *Leftwich v. United States*, 251 A.2d 646, 1969 D.C. App. LEXIS 224 (App. 1969).

— Conduct and deliberations of jury, harmless or reversible error.

Inadvertent transmission of photograph exhibit not admitted in evidence to jury at trial of

defendant for carrying pistol without license was not prejudicial where photograph was of interior of back entranceway and location of trash can which had been a matter of dispute with regard to codefendant who had been accused of stuffing jacket with gun and narcotics in pockets in trash can and was irrelevant as to defendant's case. D.C. Code § 22-3204. *Quarles v. United States*, 349 A.2d 690, 1975 D.C. App. LEXIS 298 (1975), writ of certiorari denied by 425 U.S. 972, 96 S. Ct. 2169, 48 L. Ed. 2d 795, 1976 U.S. LEXIS 1621 (1976).

Where Allen charge was given after jury which had not been sequestered had deliberated 2 hours and 20 minutes and announced that they had reached a verdict on charge of carrying a dangerous weapon but were deadlocked on charge of assault with deadly weapon and after court took jury verdict of acquittal on carrying charge and where jury deliberated only 25 minutes before returning verdict of guilty on assault charge, Allen charge was not coercive to the point of requiring reversal of conviction. D.C. Code §§ 22-502, 22-3204. *Winters v. United States*, 317 A.2d 530, 1974 D.C. App. LEXIS 391 (1974).

— Conduct of trial in general, harmless or reversible error.

In prosecution for assault with intent to kill while armed and carrying dangerous weapon, in view of overwhelming direct evidence timely placing defendant at scene of crime and equivocal and unsupported nature of his own testimony concerning his whereabouts at time of offense, any emphasis by court or his counsel upon his more general defenses and any other claimed error were harmless beyond reasonable doubt. 18 U.S.C. § 294(d); D.C. Code §§ 22-501, 22-3202, 22-3204. *United States v. Craven*, 458 F.2d 802, 1972 U.S. App. LEXIS 10987 (C.A.D.C. 1972).

Refusal of bifurcated trial prosecution sought on ground that defendant would defend on ground of want of criminal responsibility was not reversible error where defense assured trial court that there was no defense on merits, and evidence to prove that defendant was one who robbed filling station was very strong. D.C. Code §§ 22-502, 22-2901, 22-3204; U.S. Const. Amend. 5. *United States v. Grimes*, 421 F.2d 1119, 1969 U.S. App. LEXIS 10770 (C.A.D.C. 1969), writ of certiorari denied by 398 U.S. 932, 90 S. Ct. 1831, 26 L. Ed. 2d 98, 1970 U.S. LEXIS 1795 (1970).

Trial judge's questioning of defendant at trial, regarding his inconsistent explanations for why he confessed to a crime that he did not commit, was not plain error, notwithstanding defendant's claim that judge's questions indicated a skepticism of defendant's testimony; defendant's responses could have helped his defense by explaining why he gave a false

confession, and trial counsel perceived the court's questioning as innocuous enough not to object or even pose follow-up questions. *Jennings v. United States*, 989 A.2d 1106, 2010 D.C. App. LEXIS 83 (2010).

— Counsel for accused, harmless or reversible error.

Where record showed that defendant was found in possession of concealed weapon and his own testimony on trial confirmed such fact, absence of indication that defendant made informed decision, after appropriate advice, to proceed with joint counsel did not require reversal of conviction for carrying concealed weapon. D.C. Code 1961, § 22-3204. *Ford v. United States*, 379 F.2d 123, 1967 U.S. App. LEXIS 6454 (C.A.D.C. 1967).

Remand was required for hearing to determine advice defense counsel gave to defendant concerning immigration consequences of guilty plea to possession of unregistered firearm and carrying pistol without license, for purpose of ineffective assistance of counsel claim, where record was unclear regarding such advice. *Kim v. United States*, 792 A.2d 241, 2002 D.C. App. LEXIS 42 (2002).

Defense counsel was not ineffective in failing to introduce, during defendant's felony firearm possession prosecution, cell phone records to corroborate defendant's claim that he was carrying a cell phone rather than a gun during his encounter with the police; two officers saw defendant holding the gun, one officer testified to having been shot at by defendant, and the police later recovered a gun from the scene, and in light of that evidence, there was no reasonable probability that the result of the proceeding would have been different if counsel had sought to introduce his cell phone records. *United States v. Hayes*, 371 Fed.Appx. 105, 2010 U.S. App. LEXIS 4158 (C.A.D.C. 2010).

— Examination of witnesses, harmless or reversible error.

Evidence in narcotics prosecution was not so overwhelmingly in favor of conviction that error in allowing prosecutor to question defendant concerning prior convictions could be said to be harmless. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; D.C. Code § 22-3204. *United States v. Henry*, 528 F.2d 661, 1976 U.S. App. LEXIS 13310 (C.A.D.C. 1976).

Defendant's failure to object to trial court's failure to strike, sua sponte, government's allegedly self-vouching statements during its cross-examination of defendant's wife about whether law enforcement, during its investigation, had asked her whether she had any information that would help defendant rendered the issue subject to review for plain error on ap-

peal, in prosecution for assault with intent to kill while armed, aggravated assault while armed, possession of a firearm during a crime of violence, carrying a pistol without a license, and malicious destruction of property. *Shelton v. United States*, 26 A.3d 216, 2009 D.C. App. LEXIS 752 (2011).

Any error in trial court's restriction on defendants' questioning of complaining witness about witness' alleged prior conduct in loaning out his car and then falsely reporting it stolen was harmless, in prosecution for armed carjacking and weapons offenses, where complainant's version of crime, his reputation for truthfulness, his past behavior with friends, and his history of criminal convictions were all ventilated for jury's consideration. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-2903(b), 22-3204(a, b). *Brown v. United States*, 726 A.2d 149, 1999 D.C. App. LEXIS 31 (1999), writ of certiorari denied by 528 U.S. 1130, 120 S. Ct. 967, 145 L. Ed. 2d 838, 2000 U.S. LEXIS 792, 68 U.S.L.W. 3460 (2000), writ of certiorari denied by 528 U.S. 1130, 120 S. Ct. 967, 145 L. Ed. 2d 838, 2000 U.S. LEXIS 793, 68 U.S.L.W. 3460 (2000).

Error arising when prosecutor was permitted to impeach its own witnesses with prior inconsistent statements in prosecution for first-degree murder while armed was harmless, where testimony of other prosecution witnesses, if believed, established that defendant was armed and shot victim. D.C. Code 1981, §§ 6-2361, 14-102, 22-2401, 22-3202, 22-3204. In re D.A., 597 A.2d 1331, 1991 D.C. App. LEXIS 291 (1991).

Error, as result of prosecutor's open-ended question leading detective to violate court order not to mention photographic identification made by witnesses who had not given identification testimony, did not prejudice defendant in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license, where detective did not testify that witness had made identification, and defense did not rest on claim of misidentification. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Prosecutor's improper use of eight leading questions which were put to robbery victims who could not recall events, which asked whether property was taken from victims and whether victims remembered identifying defendant to police, which put before jury a fact not otherwise known, which was directly relevant to main issue in case, but which asked for cumulative evidence and were not answered, did not substantially prejudice defendant in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and

carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Error of trial court, in prosecution for felony-murder and first-degree burglary, in admitting previous statements of three prosecution witnesses to rehabilitate their testimony after defense counsel suggested that the witnesses had a motive to lie at trial was harmless, in view of government's evidence of defendant's active participation in the crimes, in conjunction with court's detailed charge to jury regarding limited use of prior consistent statements. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204. *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

Where defendant presented six witnesses whose version of events leading to defendant's arrest for carrying dangerous weapon could not have materially differed from any evidence defendant could have given had he chosen to testify, even if court did rule that government could impeach defendant by use of his prior record, defendant was not precluded from testifying and was not prejudiced in his defense. D.C. Code § 22-3204. *Watson v. United States*, 262 A.2d 121, 1970 D.C. App. LEXIS 220 (App. 1970).

— Exclusion of evidence, harmless or reversible error.

Trial court's erroneous exclusion of the transcript of defense witness's inconsistent statements before the grand jury was harmless; witness was at the scene of the shooting and was the only person who directly identified defendant as the shooter, he was called by the defense, which argued that it was witness who had the motivation to shoot victim and actually did so, transcript of witness's testimony before the grand jury was not read in full at the trial, and instead, defense counsel would impeach aspects of witness's trial testimony by referring him to specific page of grand jury transcript and reading the specific statement that was inconsistent with witness's trial testimony, and jury verdict revealed that jurors dismissed witness's testimony that defendant was the shooter. *Spencer v. United States*, 991 A.2d 1185, 2010 D.C. App. LEXIS 146 (2010).

Error was not harmless, in prosecution for carrying a pistol without a license, in excluding medical records that indicated defendant had a dressed laceration on his right hand, which were relevant to impeach police officer's testimony that she saw defendant use his right hand to throw a pistol out of a car window and noticed nothing distinctive about the hand. D.C. Code 1981, § 22-3204(a). *Dockery v.*

United States, 746 A.2d 303, 2000 D.C. App. LEXIS 44 (2000).

Any error in trial judge's precluding defendant from eliciting evidence of disposal of gun, which evidence was allegedly critical to third-party perpetrator defense, was harmless, given strength of evidence against defendant, in prosecution for second-degree murder while armed and weapons offenses; three eyewitnesses identified defendant as the shooter, all witnesses specifically denied seeing alleged gunman with gun on evening in question, and alleged gunman did not have motive to kill victim. D.C. Code 1981, §§ 22-2403, 22-3202, 22-3204(a, b). *Boykin v. United States*, 738 A.2d 768, 1999 D.C. App. LEXIS 219 (1999).

Exclusion of testimony of witness called by defendant, although violative of defendant's Fifth and Sixth Amendment rights to due process and to present witnesses in his behalf, as witness could not refuse to testify on ground of self-incrimination, was harmless error as to defendant convicted of carrying pistol without a license, even though witness would have testified that at time of arrest he was in same automobile as defendant and that he never saw gun, where evidence overwhelmingly demonstrated that defendant had constructive possession of weapon; defendant had been positively identified as being in possession of weapon before he was apprehended, and defendant was associated with other parties who had actual possession of weapon. U.S. Const. Amends. 5, 6; D.C. Code 1981, § 22-3204. *Davis v. United States*, 564 A.2d 31, 1989 D.C. App. LEXIS 169 (1989).

— In general.

Finding that, contrary to accused's assertion that Government conditioned its acceptance of coindictes' guilty pleas on their commitment to refrain from testifying in accused's behalf, failure to call coindictes to testify, in prosecution in which accused was convicted of federal narcotics offenses and of carrying pistol without a license, was solely the result of informed tactical decision of experienced defense counsel made after consultation with accused was not clearly erroneous. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; D.C. Code §§ 22-3204, 33-402(a). *United States v. Bell*, 506 F.2d 207, 1974 U.S. App. LEXIS 6271 (C.A.D.C. 1974).

Findings on motion to vacate sentence that movant's testimony that appointed trial counsel had not informed movant of time limit for filing criminal appeals was not credible were not clearly erroneous. 18 U.S.C. § 2255; D.C. Code §§ 22-502, 22-2901, 22-3204. *United*

States v. Washington, 475 F.2d 357, 1973 U.S. App. LEXIS 11934 (C.A.D.C. 1973).

— Instructions, harmless or reversible error.

Erroneous jury instruction indicating that defendant could be convicted of "using" firearm during drug trafficking incident even if he did not actively employ firearm was harmless, because jury necessarily found that defendant "carried" firearm, in violation of same statute, by finding defendant guilty of carrying a pistol without a license. 18 U.S.C. § 924(c)(1); D.C. Code 1981, § 22-3204(a). *United States v. Toms*, 136 F.3d 176, 1998 U.S. App. LEXIS 3164 (C.A.D.C. 1998).

Trial court's error in instructing jury that constructive possession of firearm would constitute "use" as required to support conviction for using and carrying firearm during and in relation to drug trafficking crime was harmless, since jury found defendant guilty of separate count of carrying pistol without license under law of District of Columbia such that jury must necessarily have found that defendant carried firearm as required to support conviction for using and carrying firearm during and in relation to drug trafficking crime. 18 U.S.C. § 924(c)(1); D.C. Code 1981, § 22-3204(a). *United States v. Smart*, 98 F.3d 1379, 1996 U.S. App. LEXIS 28269 (C.A.D.C. 1996), writ of certiorari denied by 520 U.S. 1128, 117 S. Ct. 1271, 137 L. Ed. 2d 349, 1997 U.S. LEXIS 1826, 65 U.S.L.W. 3630 (1997).

Erroneous failure to give a unanimity instruction as to which weapon, if any, was possessed by defendant did not affect his substantial rights or seriously affect fairness of trial on charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, as necessary to warrant reversal on plain-error review; trial court gave general unanimity instruction, and, while there were three possible factual scenarios involving different times, potentially different weapons, and different locations, ample evidence supported the most likely basis of conviction, i.e., that defendant carried pistol found in his girlfriend's car. *Wynn v. United States*, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Trial court should have given a special unanimity instruction regarding which weapon, if any, was possessed by defendant with respect to charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, as jury could have found defendant guilty based upon three factual scenarios, each of which involved possession of potentially different weapons, at different times, and in different locations. *Wynn v. United States*, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Trial court's failure to give jury a special unanimity instruction with regard to which firearm, if any, was carried by defendant would be reviewed only for plain error, on appeal of conviction for carrying a pistol without a license (CPWL), where defendant did not request a special unanimity instruction. *Wynn v. United States*, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Jury instruction on carrying a dangerous weapon (CDW) that reflected settled law at time of defendant's trial was not clearly contrary to the law at the time of appeal with respect to whether a knife, the alleged dangerous weapon, was entitled to Second Amendment protection, such that any error in the jury instruction in allowing a finding of guilt even if defendant carried the knife for use exclusively in self defense was not plain error; it was not clear or obvious that the United State Supreme Court, which had struck down a ban on operable handgun possession in the home in *District of Columbia v. Heller*, would extend its ruling to knives carried exclusively for use as a dangerous weapon in self defense. *Wooden v. United States*, 6 A.3d 833, 2010 D.C. App. LEXIS 601 (2010).

Trial court's erroneous submission to jury of charge of carrying pistol without license did not entitle defendant to relief, where trial court did not enter judgment against defendant on charge. *Murray v. United States*, 855 A.2d 1126, 2004 D.C. App. LEXIS 421 (2004).

Assuming that erroneous refusal to charge jury on significant part of defendant's theory of the case, consisting of evidence that defendant's prior conduct in transporting unloaded firearm in trunk of his car while traveling from state in which gun was licensed to state in which it was legal for defendant to carry gun was lawful under Firearms Owners' Protection Act (FOPA), was not of constitutional magnitude, error was not harmless in that Court of Appeals could not say with fair assurance, after pondering all that happened without stripping erroneous action from the whole, that judgment convicting defendant of carrying pistol without license, unlawful possession of unregistered firearm, and unlawful possession of ammunition for unregistered firearm was not substantially swayed by the error. 18 U.S.C. § 921 et seq.; D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204. *Bieder v. United States*, 662 A.2d 185, 1995 D.C. App. LEXIS 142 (1995).

Instruction on involuntary manslaughter was not reversibly erroneous because in requiring proof that death resulted from injuries received through commission of an unlawful act which was a misdemeanor involving danger of injury, it did not also require proof that unlawful act was proximate cause of death. D.C. Code §§ 22-2405, 22-3204. *Walker v. United States*,

403 A.2d 1163, 1979 D.C. App. LEXIS 420 (1979).

— Preliminary proceedings, harmless or reversible error.

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, action of trial court in not requiring production under subpoena of arrest record of a witness for prosecution was not prejudicial to defendant where police officer testified he had no arrest record of witness by name contained in subpoena and did not know such witness used other names mentioned by him by counsel for defendant, and counsel for defendant did not during trial procure any further subpoena for arrest record of witness under any other name. D.C. Code 1940, §§ 22-2901, 22-3204; 18 U.S.C. § 371. *Bundy v. U.S.*, 193 F.2d 694, 1951 U.S. App. LEXIS 2938 (C.A.D.C. 1951).

Government's failure to provide complaint submitted to Civilian Complaint Review Board (CCRB), in which complainant alleged he was mistreated by police officers who arrested defendant, would not require reversal of convictions for drug trafficking and weapons offenses, even assuming complaint was Brady material; presentation of the material to impeach officers' testimony would not have made a different result reasonably probable, where the evidence against defendant was overwhelming and none of the officers who testified were implicated in the complaint. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

In a prosecution for armed robbery and carrying a dangerous weapon in which the two charges were improperly joined, there was not clear and convincing evidence that the defendant had committed the armed robbery, and thus evidence of the armed robbery would not have been admissible at separate trials on the weapons charge and the misjoinder was not harmless error, where the defendant was acquitted of the armed robbery charge. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204; Criminal Rule 8(a). *Roper v. United States*, 564 A.2d 726, 1989 D.C. App. LEXIS 188 (1989).

Where assault and weapon charges against one defendant were joined for trial with murder charges against other defendants, particular defendant was prejudiced by association with evidence proving bloody and grotesque killing, and in view of reference throughout trial to defendants as group having name of particular defendant, associating particular defendant in minds of jurors with murder with which he was not charged, prejudice required reversal and there was thus abuse of discretion in denying severance. D.C. Code §§ 22-502, 22-2401, 22-

3202, 22-3204, 23-311(c); D.C. Code SCR, Criminal Rule 8(b). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

Failure to show that defendant was advised of constitutional rights at time of arrest did not entitle him to reversal of conviction for carrying deadly weapon, absent introduction of any statements made by him. D.C. Code § 22-3204. *Best v. United States*, 237 A.2d 825, 1968 D.C. App. LEXIS 125 (App. 1968).

Failure of trial judge to sua sponte order continuance when counsel was assigned to represent defendant on date of trial did not constitute error requiring reversal of convictions for attempted petit larceny, assault and carrying a deadly weapon. D.C. Code §§ 22-103, 22-504, 22-3204. *Smith v. United States*, 235 A.2d 574, 1967 D.C. App. LEXIS 207 (App. 1967).

— Rulings as to evidence generally, harmless or reversible error.

Where it was defendant's own suspicious and furtive effort in retreating to rear of store when police arrived which brought attention to him before he was arrested, and defendant in fact denied ever seeing gun or going behind store's meat counter in back of which gun was found, while still warm to the touch, presumably from body contact, on floor, no search of defendant's constitutionally protected environs disclosed weapon or resulted in its seizure, oral motion to suppress before jury was sworn was frivolous, and failure to entertain it in prosecution for carrying pistol without a license was harmless error or defect not affecting substantial rights of defendant. D.C. Code §§ 11-721(e), 11-946, 22-3204; 18 U.S.C. § 2111; Fed.Rules Crim.Proc. rule 52(a), 18 U.S.C.; D.C. Code General Sessions Court Rules, Criminal Division, rule 52(a); U.S. Const. Amend. 4. *Shellie v. United States*, 277 A.2d 288, 1971 D.C. App. LEXIS 326 (1971).

Conviction for carrying concealed weapons would not be reversed, on ground that trial judge, in finding defendant guilty, erroneously considered stipulation, made in connection with motion to suppress evidence, to effect that defendant had a possessory interest in two pistols sought to be suppressed, where no formal written stipulation was presented to judge who heard motion to suppress, and it was merely a verbal statement by counsel, and a different judge presided at the trial, and he certified that his decision was based solely on testimony adduced at trial, and in stenographic transcript there appeared no testimony or offer of testimony as to stipulation, and it did not appear to have affected decision in any way, and testimony of police officer supplied essen-

tials on which to predicate a conviction. D.C. Code 1951, § 22-3204. *Emburgh v. U.S.*, 164 A.2d 342, 1960 D.C. App. LEXIS 257 (Cr.App. 1960).

— Rulings as to indictment or pleas, harmless or reversible error.

That indictment charged each defendant with having carried pistol "openly and concealed" about his person, rather than in statutory language "openly or concealed," presented no occasion for reversal of convictions. D.C. Code § 22-3204. *United States v. Clemons*, 440 F.2d 205, 1970 U.S. App. LEXIS 6320 (C.A.D.C. 1970), writ of certiorari denied by 401 U.S. 945, 91 S. Ct. 959, 28 L. Ed. 2d 227, 1971 U.S. LEXIS 3030 (1971).

Although prosecutor should have dismissed charge for alteration of identifying marks on a pistol before trial, defendant who was also charged with carrying a pistol without a license, unlawful possession of ammunition, and possession of a prohibited weapon, was not prejudiced by presence of alteration count in his indictment, where evidence on that count was minimal and jury's verdict on the three remaining counts was supported by separate and distinct evidence. D.C. Code 1981, §§ 6-2361, 22-3204, 22-3212, 22-3214(a). *Tillman v. United States*, 487 A.2d 1152, 1985 D.C. App. LEXIS 301 (1985).

Error in statutory citation in information did not warrant reversal of conviction where error did not prejudice defendant since he was apprised of charge against him although it derived from different statutory provision. D.C. Code §§ 6-1811 to 6-1861, 22-3204, 33-402; D.C. Code SCR Criminal Rule 7(c). *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

Indictment or information.

— Different offense included in offense charged, indictment or information.

Second-degree murder while armed and attempted robbery while armed were lesser included offenses of felony-murder, requiring vacation of either the felony-murder conviction or the convictions for the lesser offenses. U.S. Const. Amend. 5; D.C. Code 1981, §§ 22-2401, 22-2403, 22-2902, 22-3202, 22-3204. *Price v. United States*, 531 A.2d 984, 1987 D.C. App. LEXIS 448 (1987).

— In general.

The courts will not skimp in affording prosecutor opportunity to obtain and appraise prior record of accused in order to determine whether to seek felony conviction for carrying dangerous weapon without license. D.C. Code 1961, § 22-3204. *Epperson v. United States*, 371 F.2d 956, 1967 U.S. App. LEXIS 7906 (C.A.D.C. 1967).

Delay of almost three months between charging defendant with misdemeanor of carrying deadly weapon and charging him instead with felony of carrying dangerous weapon after having previously been convicted of felony was not objectionable although prosecutor knew the day after arrest that defendant could be held for felony because of previous conviction in District of Columbia of carrying a deadly weapon, in view of time it took to obtain so-called "rap sheet" from F.B.I. showing defendant's felony record outside the District. D.C. Code 1961, § 22-3204; Fed.Rules Crim.Proc. rule 5(c), 18 U.S.C. Epperson v. United States, 371 F.2d 956, 1967 U.S. App. LEXIS 7906 (C.A.D.C. 1967).

In prosecution for carrying a pistol without a license, prosecution need not prove that pistol was carried openly or was concealed, in view that it is an offense under statute to carry a pistol without a license irrespective of whether pistol was carried openly or concealed. D.C. Code 1940, § 22-3204. U.S. v. Waters, 73 F.Supp. 72, 1947 U.S. Dist. LEXIS 2253 (D.D.C.1947).

Indictment charging defendant with carrying a pistol but failing to charge, as required by statute, that pistol was carried by defendant without a license failed to charge an offense. D.C. Code 1940, §§ 22-3204, 22-3205. U.S. v. Waters, 73 F.Supp. 72, 1947 U.S. Dist. LEXIS 2253 (D.D.C.1947).

"Operability" was necessarily an element of definition of a "pistol" under statute, and thus indictment for carrying a pistol without a license in violation of such statute was not defective in that it failed specifically to charge that the weapon was operable. D.C. Code § 22-3204. Lee v. United States, 402 A.2d 840, 1979 D.C. App. LEXIS 387 (1979).

In prosecution against a passenger in rear seat of car for carrying without a license a pistol which was found under passenger side of front seat, it was not necessary for Government to show the existence of an aperture in bottom rear of front seat in order to lay a basis for inference of convenient access, in light of fact that it was common knowledge that such an aperture was present in ordinary passenger cars of kind in which defendant was riding. D.C. Code § 22-3204. Johnson v. United States, 309 A.2d 497, 1973 D.C. App. LEXIS 354 (1973), writ of certiorari denied by 416 U.S. 951, 94 S. Ct. 1960, 40 L. Ed. 2d 301, 1974 U.S. LEXIS 647 (1974).

Return of indictment by grand jury of United States district court to the superior court of the District of Columbia did not violate indietee's Fifth Amendment rights where beginning on date indictment was returned the United States district court for the District of Columbia no longer had jurisdiction over offense with which indietee was charged, to wit, carrying a

pistol without a license; on date of indictment the district court grand jury was expressly authorized by statute to return indictments to the superior court. D.C. Code §§ 11-502, 11-923, 11-1903, 22-3204; U.S. Const. Amend. 5. Atkinson v. United States, 295 A.2d 899, 1972 D.C. App. LEXIS 269 (1972).

— Issues, proof and variance, indictment or information.

In prosecution for carrying unlicensed pistol and for increased punishment by reason of recidivism, defense counsel's concession, in bail application, that defendant had been convicted of robbery in 1957 was insufficient proof, for purpose of sentencing under recidivist statute, that defendant had been convicted of robbery in 1958 as charged by government. D.C. Code §§ 22-2901, 22-3204. United States v. Clemons, 440 F.2d 205, 1970 U.S. App. LEXIS 6320 (C.A.D.C. 1970), writ of certiorari denied by 401 U.S. 945, 91 S. Ct. 959, 28 L. Ed. 2d 227, 1971 U.S. LEXIS 3030 (1971).

— Joinder of parties or counts, indictment or information.

Robbery count charging defendants with taking money, the property of grocery store, and pistol, the property of security guard was not duplicious but rather charged that one person, the guard, was robbed of the pistol and the money he was guarding, and, in any event, defendants waived any defect by not protesting before trial. D.C. Code §§ 22-2901, 22-3204. United States v. Bolden, 514 F.2d 1301, 1975 U.S. App. LEXIS 14122 (C.A.D.C. 1975).

Where offenses of robbery, assault with dangerous weapon, assault on member of police force, unauthorized use of vehicle, and carrying dangerous weapon were based on two or more connected acts constituting part of common scheme and plan, defendants were alleged to have participated in same series of acts constituting offenses and each of defendants aided and abetted offenses charged against other defendants, it was proper for grand jury to join defendants and offenses in the indictment. D.C. Code §§ 22-502, 22-505(a), 22-2204, 22-2901, 22-3204; Fed.Rules Crim.Proc. rule 8(a, b), 18 U.S.C. United States v. Wilson, 434 F.2d 494, 1970 U.S. App. LEXIS 8760 (C.A.D.C. 1970).

Murder and weapons charges against one defendant could be joined with obstruction of justice charges against second defendant, in multi-defendant prosecution arising from stabbing death of victim, where defendants both participated in attack on victim and second defendant's attempt to keep his girlfriend from talking to police, which was basis for obstruction of justice charges, was logically related to attack. D.C. Code 1981, §§ 22-722(a)(3), 22-2401, 22-3202, 22-3204(b); Criminal Rule 8(b). Sams v. United States, 721 A.2d 945, 1998 D.C.

App. LEXIS 229 (1998), writ of certiorari denied by 528 U.S. 1135, 120 S. Ct. 977, 145 L. Ed. 2d 928, 2000 U.S. LEXIS 832, 68 U.S.L.W. 3479 (2000), writ of certiorari denied by 531 U.S. 1015, 121 S. Ct. 575, 148 L. Ed. 2d 492, 2000 U.S. LEXIS 7864, 69 U.S.L.W. 3363 (2000).

Information, which charged defendant with only one count each of carrying pistol without license and possession of unregistered firearm even though there had been two guns involved, was not duplicious. D.C. Code 1981, §§ 6-2311(a), 22-3204. *Chapman v. United States*, 493 A.2d 1026, 1985 D.C. App. LEXIS 402 (1985).

— Statutory language, indictment or information.

Where indictment carefully traced language of statute in indicting defendant for carrying a dangerous weapon without a license, indictment was valid and it was of no legal significance that the presentment merely stated that the defendant was carrying a dangerous weapon, which was not an offense. D.C. Code § 22-3204. *United States v. Bridges*, 432 F.2d 692, 1970 U.S. App. LEXIS 7212 (C.A.D.C. 1970).

Pistol-carrying count of indictment was not defective in using conjunctive “and,” instead of statutory disjunctive “or,” in charging that defendant “did carry openly and concealed a dangerous weapon”, where proof tended to show that weapon was concealed when defendant approached scene of shooting and was then produced and carried openly. D.C. Code 1951, § 22-3204. *Kendrick v. U.S.*, 238 F.2d 34, 1956 U.S. App. LEXIS 3983 (C.A.D.C. 1956).

Instructions.

— Aiders and abettors, instructions.

Instruction that stated that an aider and abettor is legally responsible for the acts of other persons that are the “natural and probable consequence” of the crime in which he intentionally participates was not plain error in armed robbery (AR) prosecution, even though “natural and probable consequence” language in the aiding and abetting instruction had been rejected since defendant’s trial, as defendant could not demonstrate that his substantial rights were affected, in light of overwhelming evidence that defendant was an active participant in the robbery. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

— In general.

In context in prosecution for carrying a pistol without a license, in which defendant claimed he was holding pistol for a friend, defendant was not entitled to instruction to effect that prosecution must prove that possession was not temporary and innocent. D.C. Code § 22-3204.

United v. Freeman, 462 F.2d 290, 1972 U.S. App. LEXIS 10618 (C.A.D.C. 1972).

In prosecution for unlawfully carrying a pistol, failure to instruct jury on “criminal intent” on ground that such intent was an essential ingredient in the crime derived from the common law was not error since carrying a dangerous weapon without a license was not an offense at common law and all that was needed was an intent to commit the proscribed act. D.C. Code 1951, § 22-3204. *Cooke v. U.S.*, 275 F.2d 887, 1960 U.S. App. LEXIS 5296 (C.A.D.C. 1960).

Instruction that stated that an aider and abettor is legally responsible for the acts of other persons that are the “natural and probable consequence” of the crime in which he intentionally participates was not plain error in prosecution for assault with a dangerous weapon (ADW), aggravated assault while armed (AAWA), possession of a firearm during a crime of violence (PFCV), carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA), even though “natural and probable consequence” language in the aiding and abetting instruction had been rejected since defendant’s trial, as defendant could not demonstrate that his substantial rights were affected, in light of overwhelming evidence that defendant “knowingly and intelligently” participated in the commission of such offenses. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

Trial judge was not required to define term “great bodily injury,” used in jury instruction defining “dangerous weapon” in prosecution for carrying a dangerous weapon (CDW), in accord with definition of element of “serious bodily injury” under aggravated assault statute; trial judge defined “dangerous weapon” in accord with instruction defining term, “great bodily injury” as used in definition did not have a “technical” meaning different from its ordinary meaning in context of factual circumstances of case, and there was no inquiry from jury requesting clarification or definition of term. *Savage-El v. United States*, 902 A.2d 120, 2006 D.C. App. LEXIS 357 (2006).

Defendant charged with drug trafficking and weapons offenses was not entitled to missing witness instruction regarding individual who filed complaint with Civilian Complaint Review Board (CCRB) for arresting police officers’ conduct, as defendant failed to establish the peculiar availability of the witness to the government, where government attempted, unsuccessfully, to subpoena witness for trial, and defendant’s counsel was given witness’s name and address, and when he attempted to contact witness, defendant’s brother answered the door of witness’s apartment. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App.

LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

Exclusion of any reference to defendant's rights, under federal Firearms Owners' Protection Act (FOPA), to transport weapon between two states in which it was lawful to carry weapon so long as weapon was unloaded and inaccessible deprived defendant of instruction on significant part of his theory of case and created erroneous impression that defendant had been engaged in criminal conduct immediately prior to his handing pouch containing loaded pistol to police officer at entrance to Capitol Building, which misleading incriminatory impression about defendant's earlier actions had no probative value whatsoever in prosecution for carrying pistol without a license, possession of unregistered firearm and possession of ammunition for unregistered firearm. 18 U.S.C. § 921 et seq.; D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204. *Bieder v. United States*, 662 A.2d 185, 1995 D.C. App. LEXIS 142 (1995).

Instruction that jury could convict defendant of possession of firearm during crime of violence (PFCV) only if it also convicted him of assault with dangerous weapon (ADW) was not required to cure allegedly confusing verdict form, since defense counsel's equivocal statement regarding PFCV charge in verdict form, that it was "unclear" and "should relate to both counts involved," did not amount to objection on grounds of jury confusion. D.C. Code 1981, §§ 22-503, 22-3204(b). *Ransom v. United States*, 630 A.2d 170, 1993 D.C. App. LEXIS 221 (1993).

In prosecution for second-degree murder, attempted robbery, assault with intent to kill while armed, carrying a pistol without a license, assault with intent to kill while armed, and obstruction of justice, court's refusal to give limiting instruction as to use jury might make of evidence of one crime in determination of the other crimes was not error given the fact that jury was instructed on need to keep overlapping evidence of each crime charged separate in its deliberations. D.C. Code 1981, §§ 22-501, 22-703, 22-2902, 22-3202, 22-3204. *Smith v. United States*, 470 A.2d 315, 1983 D.C. App. LEXIS 550 (1983), writ of certiorari denied by 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344, 1985 U.S. LEXIS 988, 53 U.S.L.W. 3598 (1985).

Proposed instructions encompassing the defense theory that intent to use knife to menace or inflict bodily harm was a necessary ingredient of offense of carrying deadly or dangerous weapon was incorrect and would have misled jury seriously and was properly refused. D.C. Code § 22-3204. *Leftwich v. United States*,

251 A.2d 646, 1969 D.C. App. LEXIS 224 (App. 1969).

— Issues relating to jury trial, instructions.

Instruction given by trial judge to jury in response to prosecutor's misrepresentations of testimony of defense witness during rebuttal argument, in which prosecutor asserted that witness had incriminated defendant of possession of a pistol when in fact she had not, that the jury's recollection controlled and that counsel's statements were not evidence, was insufficient to cure prejudice caused by misrepresentations in prosecution for possession of crack cocaine with the intent to distribute it while armed (PWIDWA), possession of a firearm during a crime of violence or dangerous offense (PFCV), and carrying a pistol without a license (CPWOL); misrepresentations were serious in nature and instruction did not alert jury to prosecutor's clear mischaracterization of the evidence. *Anthony v. United States*, 935 A.2d 275, 2007 D.C. App. LEXIS 322 (2007).

Trial court was not required to reinstruct jury, in response to jury note that it had not yet reached decision, that conviction for assault with deadly weapon was necessary for conviction for possession of firearm during crime of violence in order to avoid inconsistent verdicts, where original instructions stated that conviction on assault charge was prerequisite to possession charge, and there was no request for reinstruction by defense counsel or evidence of jury confusion. D.C. Code 1981, §§ 22-502, 22-3204. *Smith v. United States*, 684 A.2d 307, 1996 D.C. App. LEXIS 210 (1996).

Instruction that jury could convict defendant of possession of firearm during crime of violence (PFCV) only if it also convicted him of assault with dangerous weapon (ADW) was not required, where neither of two notes sent by jury to trial judge gave any indication that jury was on verge of reaching inconsistent verdicts. D.C. Code 1981, §§ 22-503, 22-3204(b). *Ransom v. United States*, 630 A.2d 170, 1993 D.C. App. LEXIS 221 (1993).

Jury note indicating that it was about to return inconsistent verdicts demonstrated jury confusion that required trial court to reinstruct jury that they could not find defendant guilty of compound offense of possession of a firearm during a crime of violence without convicting her of predicate offense of assault with a dangerous weapon; jury note indicated that it reached verdict on firearm count, but could not reach verdict on assault count. D.C. Code 1981, § 22-3204(b). *Whitaker v. United States*, 617 A.2d 499, 1992 D.C. App. LEXIS 304 (1992).

Trial court was not required sua sponte to voir dire entire jury, in prosecution for carrying dangerous weapon (a buck knife) upon learning that juror had remarked during break in trial

that she carried little knife and had pulled Swiss army knife out of her purse and displayed it, particularly in that such voir dire might well have served to create very prejudice to defendant with which he was concerned at trial. D.C. Code 1981, § 22-3204. *Lewis v. United States*, 567 A.2d 1326, 1989 D.C. App. LEXIS 262 (1989).

In prosecution for burglary and robbery and assault with a dangerous weapon, appearance in jury room of bullet which had no relationship to case did not necessitate declaration of mistrial, in view of trial court's instructions to jury to disregard. D.C. Code §§ 22-502, 22-1801, 22-2901, 22-3202, 22-3204. *Evans v. United States*, 392 A.2d 1015, 1978 D.C. App. LEXIS 327 (1978).

Where jury had commenced its deliberations in prosecution for armed robbery, assault with a dangerous weapon, receiving stolen property, and carrying a pistol without a license, when it presented to the court a question concerning the armed robbery count, the court did not abuse its discretion by giving, in the face of defendant's objection but in the absence of a request to present argument, a supplemental instruction on aiding and abetting. D.C. Code §§ 22-502, 22-2205, 22-2901, 22-3202, 22-3204. *Atkinson v. United States*, 322 A.2d 587, 1974 D.C. App. LEXIS 243 (1974).

Where testimony, in prosecution for assault with a dangerous weapon and carrying a concealed weapon, by complaining witness concerning alleged rape by defendant was highly probative of defendant's intent and motive in pointing gun at her and in explaining circumstances surrounding defendant's use of the gun for purposes of frightening her into submission, and where jury was given immediate cautionary instruction concerning limited purpose of the testimony and similar instruction was contained in final charge, admission of such testimony was not abuse of discretion. D.C. Code §§ 22-502, 22-3204. *Wooten v. United States*, 285 A.2d 308, 1971 D.C. App. LEXIS 258 (1971).

In prosecution for carrying deadly or dangerous weapon, where court's instruction on weapon was adequate and there was no cause for confusion in the minds of the jury, it was within trial court's discretion to give the "Allen" charge reminding jurors that they should give some thought to views of others and should consider their position in light of those views. D.C. Code § 22-3204. *Leftwich v. United States*, 251 A.2d 646, 1969 D.C. App. LEXIS 224 (App. 1969).

— Necessity and sufficiency, instructions.

Failure to initially specify that in order to convict on presented charge, jury had to find that defendants possessed five grams of cocaine was harmless error where defense counsel did

not object and prosecutor pointed error out to judge who then corrected error. D.C. Code 1981, § 22-3204; § 22-3214 (repealed). *United States v. Gibbs*, 904 F.2d 52, 1990 U.S. App. LEXIS 8520 (C.A.D.C. 1990).

Evidence in prosecution for receipt of firearm by convicted felon, carrying dangerous weapon without a license and receiving stolen property was sufficient for jury to find both "inducement" by government agents, who were running undercover fencing operation and who first asked defendant to get guns and asked him about guns some 20 times, and lack of predisposition on part of defendant, who only obtained and sold gun when agents said they would not take his other offerings, who on several occasions indicated his unwillingness to deal with guns and who appreciated penalties he would receive if he were caught with a gun, thus requiring instruction on entrapment defense. 18 U.S.C. § 922(h); D.C. Code §§ 22-2205, 22-3204. *United States v. Borum*, 584 F.2d 424, 1978 U.S. App. LEXIS 10455 (C.A.D.C. 1978).

Explanation of penalty for offense is required only for charge of first-degree murder; in every other instance, sentencing is solely the province of the court, and not of jury. D.C. Code §§ 22-502, 22-2401, 22-2403, 22-2901, 22-3202, 22-3204. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Viewing court's charge in its entirety clearly showed that instruction on specific intent was not omitted in prosecution for armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon. D.C. Code §§ 22-502, 22-2901, 22-3202, 22-3204. *United States v. Gaither*, 440 F.2d 262, 1971 U.S. App. LEXIS 11869 (C.A.D.C. 1971).

Aiding and abetting instruction needs no modification in regard to possessory weapon offenses like possessing a firearm during a crime of violence. D.C. Code 1981, § 22-3204(b). *Fisher v. United States*, 749 A.2d 710, 2000 D.C. App. LEXIS 54 (2000), writ of certiorari denied by 531 U.S. 1180, 121 S. Ct. 1159, 148 L. Ed. 2d 1019, 2001 U.S. LEXIS 1634, 69 U.S.L.W. 3555 (2001).

Trial court's aiding and abetting instruction correctly and unambiguously stated applicable law in prosecution for murder, assault with dangerous weapon (ADW), conspiracy to distribute cocaine, and carrying pistol without license, despite fact that alleged act of aiding and abetting by furnishing murder weapon to murderer, was itself a crime. D.C. Code 1981, §§ 22-502, 22-2403, 22-3202, 22-3204. *Lyons v. United States*, 683 A.2d 1080, 1996 D.C. App. LEXIS 306 (1996).

Jury instruction on statutory definition of pistol was not required in trial for second-

degree murder while armed and possession of firearms during crime of violence, where neither offense required proof that weapon used was pistol. D.C. Code 1981, §§ 22-2403, 22-3202, 22-3204(b). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

Jury instruction on statutory definition of pistol was not required for jury instruction on charge of carrying pistol without license in that definition was not element of statutory offense; moreover, no rational jury could have failed to find that gun admittedly used by defendant was pistol based on defendant's own testimony that he shot victim with gun, and his taped statement to police that he believed weapon was a ".38." D.C. Code 1981, § 22-3204(a). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

Where both Government and defendant opposed instructions on lesser included offenses as to defendant charged with burglary, attempted robbery, assault, and murder, trial court's refusal to so instruct jury on request of codefendant was not error. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2401, 22-2402, 22-3202, 22-3204. *Adams v. United States*, 466 A.2d 439, 1983 D.C. App. LEXIS 483 (1983).

Trial court erred in including equally balanced mind concept in jury charge on Government's burden of proof in prosecution for illegal possession of pistol but error was harmless where only issue in case was whether pistol was found in defendant's automobile and resolution of issue depended upon whether defendant's or police officer's testimony was to be believed and where objectionable language in charge was interspersed among detailed and repeated references to Government's burden to prove guilt beyond reasonable doubt. D.C. Code § 22-3204. *Hughes v. United States*, 363 A.2d 284, 1976 D.C. App. LEXIS 342 (1976).

Where, during prosecution for assault with dangerous weapon and carrying pistol without license, defendant testified that he did not act at all, repudiating his initial admission to police that he shot complainant in self-defense, evidence of self-defense was absent and trial court properly refused instruction on that subject. D.C. Code §§ 22-502, 22-3204. *Hale v. U.S.*, 361 A.2d 212, 1976 D.C. App. LEXIS 336 (1976).

Where defendant was acquainted with potential witness and made no effort to locate him or call him as a witness, trial court properly refused to give a missing witness instruction upon failure of the government to call the potential witness to rebut defendant's claim that the potential witness had given defendant the gun which defendant was charged with carrying without a license. D.C. Code § 22-

3204. *Anderson v. United States*, 352 A.2d 392, 1976 D.C. App. LEXIS 454 (1976).

Instruction outlining various necessary elements of offense of carrying deadly or dangerous weapon, defining a "deadly or dangerous weapon" and advising that in determining whether the instrument was such a weapon "you may consider all the circumstances surrounding its possession and use" was adequate. D.C. Code § 22-3204. *Leftwich v. United States*, 251 A.2d 646, 1969 D.C. App. LEXIS 224 (App. 1969).

— Possession, instructions.

Record did not support defendant's contention that trial court's jury instruction regarding a carrying a pistol without a license (CPWL) conviction based on a constructive possession theory confused jury; once jury was reinstructed as to actual and constructive possession, after expressing confusion between CPWL and possession of an unregistered firearm, there were no further notes sent to the court indicating any confusion. *Johnson v. United States*, 840 A.2d 1277, 2004 D.C. App. LEXIS 4 (2004).

Although trial court's comments regarding difference between definition of constructive possession and definition of carrying were perhaps inartfully worded, jury was properly informed of applicable law, in prosecution for carrying pistol without license, possession of unregistered firearm, unlawful possession of ammunition, possession of phencyclidine, and possession of marijuana; in response to jury request for definition of carrying firearm, trial court gave constructive possession and carrying instructions and reminded jury that constructive possession instruction applied to other charges in the case and that concept of possession was "not really applicable" to the CPWL charge. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204, 33-541(d). *Deneal v. United States*, 551 A.2d 1312, 1988 D.C. App. LEXIS 219 (1988).

To warrant an instruction on innocent possession in prosecution for carrying pistol without license, defendant's actions must demonstrate both that he had intent to turn weapon over to police and that he was pursuing such an intent with immediacy and through a reasonable course of conduct. D.C. Code § 22-3204. *Logan v. United States*, 402 A.2d 822, 1979 D.C. App. LEXIS 384 (1979).

Instruction on innocent possession was not warranted in proceeding in which defendant was convicted of carrying pistol and in which defendant contended that he had taken the pistol in question out of potential reach of certain person in effort to protect other members of his household from harm, in view of fact

that defendant had no intent to turn pistol over to police. D.C. Code § 22-3204. *Logan v. United States*, 402 A.2d 822, 1979 D.C. App. LEXIS 384 (1979).

— Requests for instructions.

Although, in prosecution for assault with a dangerous weapon and for carrying a pistol without a license, prosecution evidence was introduced to the effect that defendant assaulted the complainant in retaliation for her telling the police she believed he had been involved in a robbery, trial judge was not required to, *sua sponte*, give a limiting instruction concerning the evidence connecting defendant with the robbery, particularly since the evidence in question concerned not so much acts which had been engaged in by defendant, but rather the activities of the complainant, and since that evidence was relevant on the issues of identity and motive. D.C. Code §§ 22-502, 22-3204. *United States v. Mizzell*, 452 F.2d 1328, 1971 U.S. App. LEXIS 7048 (C.A.D.C. 1971).

Trial court was not required to *sua sponte* give special unanimity instruction with respect to charge of carrying pistol without a license arising from discovery of two guns in vehicle driven by defendant, where there was no factual or legal distinction to be made between two guns, and defendant did not present different defenses regarding two guns. D.C. Code 1981, § 22-3204. *Henry v. United States*, 754 A.2d 926, 2000 D.C. App. LEXIS 135 (2000).

Defendant charged with carrying pistol without license was not entitled to jury instruction that if defendant did not voluntarily come into contact with pistol he did not have "possession" of it; instructions given left no doubt that defendant could not be convicted if he never knew pistol had been thrust into his pocket or learned that fact only moments before he was frisked, in which case his possession would not have been "knowingly." D.C. Code 1981, § 22-3204. *Campos v. United States*, 617 A.2d 185, 1992 D.C. App. LEXIS 288 (1992).

— Self-defense, instructions.

In prosecution for carrying a pistol without a license, court may not charge that mere holding of loaded pistol makes man guilty if the theory of the defense shows, e. g., that defendant did not get the gun except in self-defense. D.C. Code § 22-3204. *United v. Freeman*, 462 F.2d 290, 1972 U.S. App. LEXIS 10618 (C.A.D.C. 1972).

Self defense instruction on the charge of carrying a dangerous weapon (CDW) was not warranted, in trial that resulted in acquittal of defendant on charges of second degree murder while armed and manslaughter while armed but conviction of defendant on the charge of CDW, where defendant had just fended off an

assault by victim, defendant picked up ice pick as he left his home as a precaution, and defendant anticipated the use of the ice pick as a weapon if the victim resumed his assaultive behavior. *Mack v. United States*, 6 A.3d 1224, 2010 D.C. App. LEXIS 612 (2010).

Defendant charged with assaulting police officer while armed was not entitled to self-defense instructions, where no lesser-included charge of simple assault was before jury and defendant did not claim that police officers used excessive force. D.C. Code 1981, §§ 22-504, 22-505, 22-3202. *Nelson v. United States*, 580 A.2d 114, 1990 D.C. App. LEXIS 244 (1990).

Jury instructions in prosecution for assault on police officer while armed, in which jury was advised three times that government had to prove beyond reasonable doubt that defendant knew or had reason to know that men at whom he fired shots were police officers, adequately explained law to jury and adequately encompassed defense theory that defendant thought his pursuers were drug dealers; it was not necessary that instructions be modified to focus jury's attention on defendant's claim that he had not heard police officers identify themselves, that under circumstances he had no reason to believe his plain clothes pursuers were police officers, and that he therefore reasonably believed they were drug dealers. D.C. Code 1981, §§ 22-505, 22-3202. *Nelson v. United States*, 580 A.2d 114, 1990 D.C. App. LEXIS 244 (1990).

In homicide prosecution, wherein defendant claimed self-defense, instruction which did not impose duty to retreat but did allow failure to retreat, together with all of the circumstances, to be considered by jury in determining if there was case of true self-defense correctly stated law of jurisdiction. D.C. Code §§ 22-2403, 22-3202, 22-3204. *Gillis v. United States*, 400 A.2d 311, 1979 D.C. App. LEXIS 320 (1979).

In prosecution for carrying a pistol without a license, even if defendant had showed facts sufficient to justify instruction on possession of weapon for self-defense, requested instruction requiring acquittal if jury found possession of pistol was for an innocent purpose was too broad and was properly refused. D.C. Code § 22-3204. *Mitchell v. United States*, 302 A.2d 216, 1973 D.C. App. LEXIS 251 (1973).

Joint or separate trial of charges.

Defendant was not impermissibly prejudiced by refusal to sever charge, of possession of a firearm subsequent to a felony conviction from counts of armed bank robbery and carrying a pistol without a license or by failure to hold a two-stage trial notwithstanding that evidence of prior offense would not have been admissible in a separate trial for the bank robbery and carrying offenses, where jury was not informed of nature of prior offense, i.e., bank robbery,

jury was twice instructed concerning limited evidentiary use to which stipulation of prior offense should be put and indictment was re-typed before being submitted or read to jury so they did not indicate nature of the prior felony. Fed.R.Cr.Proc. Rule 14, 18 U.S.C.; 18 U.S.C. § 2113(a, d); 18 U.S.C.App. § 1202(a)(1); D.C. Code 1981, § 22-3204. *United States v. Daniels*, 770 F.2d 1111, 1985 U.S. App. LEXIS 21247 (C.A.D.C. 1985).

Prosecutions for carrying pistol without license, in violation of District of Columbia Code, and failing to register same pistol, in violation of District regulation, could not be combined in one proceeding, since one was within prosecutorial jurisdiction of District Counsel's office and under jurisdiction of court of general sessions while other was under prosecutorial authority of federal attorney and within jurisdiction of district court. D.C. Code § 22-3204. *United States v. Wilder*, 463 F.2d 1263, 1972 U.S. App. LEXIS 9538 (C.A.D.C. 1972).

No conflict existed between defenses presented by defendant and codefendant which would warrant severance of charges, in multi-defendant prosecution arising from stabbing death of victim; codefendant's theory was one of self-defense, defendant maintained that defendant was acting in defense of codefendant, and there was testimony from several government witnesses as to activities of both defendants so that jury could not have been confused or misled simply by their joinder in single indictment. D.C. Code 1981, §§ 22-722(a)(3), 22-2401, 22-3202, 22-3204(b). *Sams v. United States*, 721 A.2d 945, 1998 D.C. App. LEXIS 229 (1998), writ of certiorari denied by 528 U.S. 1135, 120 S. Ct. 977, 145 L. Ed. 2d 928, 2000 U.S. LEXIS 832, 68 U.S.L.W. 3479 (2000), writ of certiorari denied by 531 U.S. 1015, 121 S. Ct. 575, 148 L. Ed. 2d 492, 2000 U.S. LEXIS 7864, 69 U.S.L.W. 3363 (2000).

Trial judge did not abuse his discretion in refusing to grant severance to defendant respecting obstruction of justice charge in prosecution for armed robbery, possession of firearm during commission of crime of violence, carrying pistol without license, and obstruction of justice, despite contention that defendant wished to testify respecting obstruction of justice charge and not other charges, where defendant's proposed testimony would not have been altogether exculpatory, and judge indicated his readiness to place reasonable restrictions on any cross-examination of defendant regarding armed robbery, provided such could be accomplished without unfairness to prosecution. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204, 22-3204(a), (a)(1). *Roy v. United States*, 652 A.2d 1098, 1995 D.C. App. LEXIS 6 (1995).

The offenses of armed robbery and carrying a dangerous weapon were not sufficiently similar to justify joinder under rule, even though the

same gun may have been used in both offenses, in that the two crimes share only a single element, and the armed robbery involved an alleged theft at gunpoint of a gold chain from an acquaintance, while the carrying of a dangerous weapon involved the possession of a BB gun in a public restroom the following day. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204; Criminal Rules 8, 8(a). *Roper v. United States*, 564 A.2d 726, 1989 D.C. App. LEXIS 188 (1989).

Two robbery incidents prosecuted against defendant in same trial, which were proved by prosecution's use of four witnesses testifying as to first robbery and then use of nine witnesses testifying as to second robbery, which were defended by claim of misidentification as to first robbery and denial of commission of any crime as to second robbery, which prosecutor argued as distinct offenses, which led trial court to instruct jury at beginning and end of trial to view robberies as separate and distinct incidents, involved sufficiently distinct and separate evidence as to each robbery, were not confused in mind of jury to prejudice of defendant, and, therefore, did not need to be severed. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204; Criminal Rule 8(a). *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Defendant's statement that defendant would become embarrassed and confounded by having to present separate defenses to robbery charges for two separate incidents and that defendant would testify as to one case but not other, but which did not reveal content of defendant's testimony, was not convincing showing that defendant had both important testimony to give concerning one count and strong need to refrain from testifying on other robbery count and, therefore, did not establish prejudice to defendant which would justify severance of prosecutions. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204; Criminal Rule 8(a). *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Charges against defendant, including two counts of assault with a dangerous weapon, one count of second-degree murder while armed, and two counts of carrying a pistol without a license, were properly joined based on the similar character of the offenses, which arose out of two incidents, one occurring at about 5:30 p.m. and the other, an unrelated incident, at about 1:00 a.m. the following morning, in that the evidence of each offense tended to negate the possibility that defendant had acted in self-defense, as he asserted, and tended to establish rather that he had pursued a deliberate course of action in each incident, and the evidence regarding the two incidents was separate and distinct so that it was not likely to be amalgamated in the jury's mind into a single inculpatory

mass. D.C. Code 1981, §§ 22-502, 22-2403, 22-3204; Criminal Rule 8. *Bruce v. United States*, 471 A.2d 1005, 1984 D.C. App. LEXIS 311 (1984).

In prosecution for second-degree murder, attempted robbery, assault with intent to kill while armed, carrying a pistol without a license, assault with intent to kill while armed, and obstruction of justice, court's refusal to sever charges relating to death by strangling from shooting charges was not abuse of discretion since grant of severance during trial is left to court's discretion and under particular circumstances evidence of each crime was admissible in proof of others. D.C. Code 1981, §§ 22-501, 22-703, 22-2902, 22-3202, 22-3204. *Smith v. United States*, 470 A.2d 315, 1983 D.C. App. LEXIS 550 (1983), writ of certiorari denied by 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344, 1985 U.S. LEXIS 988, 53 U.S.L.W. 3598 (1985).

Consolidating charge that defendant had violated Bail Reform Act for trial with charges of unauthorized use of vehicle and of carrying pistol without license was not abuse of discretion, in light of fact that a "connection" between the charged acts was manifested, that evidence of the other charges would be admissible in a separate bail violation charge to show motive for flight and willfulness and that evidence of the bail violation would be admissible in a separate trial of the other charges to demonstrate consciousness of guilt. D.C. Code §§ 22-2204(a), 22-3204, 23-111(a), 23-313, 23-1327(a, b); D.C. Code SCR, Criminal Rules 8(a), 13, 14. *Grant v. United States*, 402 A.2d 405, 1979 D.C. App. LEXIS 366 (1979).

Defendant, who was convicted of possession of dangerous weapon and four counts of first-degree murder, failed to establish abuse of discretion in denial of his motion to sever counts of indictment involving a murder, which was only homicide that defendant wished to testify about, from counts charging him with the other murders, in that defendant, by merely stating that "[I]t is very possible that the defendant will wish to take the stand with respect to one charge and not the others," had not presented sufficient information as to nature of testimony he wished to give on one count and his reasons for not testifying on other counts. D.C. Code §§ 22-2401, 22-3204, 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Strickland v. United States*, 389 A.2d 1325, 1978 D.C. App. LEXIS 478 (1978), writ of certiorari denied by 440 U.S. 926, 99 S. Ct. 1258, 59 L. Ed. 2d 481, 1979 U.S. LEXIS 927 (1979).

Where robbery and felony-murder, although unrelated as to place, were so closely related in time as to almost constitute continuing transaction and evidence of robbery would have been admissible in separate trial for felony-murder

to show motive, intent, absence of accident and common scheme or plan to rob, trial court did not abuse its discretion in denying severance of robbery and felony-murder counts. D.C. Code §§ 22-2401, 22-2901, 22-3204; D.C. Code SCR, Criminal Rule 14. *Calhoun v. United States*, 369 A.2d 605, 1977 D.C. App. LEXIS 421 (1977).

Defendant, who was simultaneously tried by a jury on statutory charge of carrying a pistol without a license and by the judge on police regulatory charges of possessing an unregistered firearm and possessing ammunition therefor, was not deprived of his due process rights by the very nature of the concurrent adjudication of all three charges against him, where the trial court was careful to exclude any reference to the existence of extrinsic charges and the jurors were properly guided as to the nature of their responsibilities and the evidence which they might consider. D.C. Code § 22-3204. *Copening v. United States*, 353 A.2d 305, 1976 D.C. App. LEXIS 491 (1976).

Joint or separate trials of codefendants.

Trial court's failure to sever charges in multi-defendant prosecution arising from stabbing death of victim did not create "spillover" prejudice against defendant by making trial so complex that jury was unable to decide guilt or innocence of each defendant separately from others, where one codefendant was acquitted of all charges, and thus, no basis existed for concluding that jury was confused or frustrated by complexity of evidence, or that jury could not fairly decide guilt or innocence of one defendant separately from others. D.C. Code 1981, §§ 22-722(a)(3), 22-2401, 22-3202, 22-3204(b). *Sams v. United States*, 721 A.2d 945, 1998 D.C. App. LEXIS 229 (1998), writ of certiorari denied by 528 U.S. 1135, 120 S. Ct. 977, 145 L. Ed. 2d 928, 2000 U.S. LEXIS 832, 68 U.S.L.W. 3479 (2000), writ of certiorari denied by 531 U.S. 1015, 121 S. Ct. 575, 148 L. Ed. 2d 492, 2000 U.S. LEXIS 7864, 69 U.S.L.W. 3363 (2000).

In prosecution which resulted in conviction of carrying a pistol without a license, trial court did not abuse its discretion in denying defendant's motion to sever his trial from that of his codefendant on ground that jury might infer his guilt from facts and circumstances relating to other weapons found in codefendant's trunk. D.C. Code 1981, §§ 22-3204, 23-313. *Brown v. United States*, 546 A.2d 390, 1988 D.C. App. LEXIS 135 (1988).

Where assault and weapon charges against one defendant were distinct in time and place from charges of first-degree murder while armed, brought against other defendants, and evidence of murder was overwhelmingly major portion of five-week trial while there was comparatively meager evidence on assault and weapon charges, and evidence of murder would

not have been admissible at separate trial of particular defendant on assault and weapon charges, it was error to deny severance. D.C. Code §§ 22-502, 22-2401, 22-3202, 22-3204, 23-311(c); D.C. Code SCR, Criminal Rule 8(b). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

Joinder of defendants, one charged with a misdemeanor and the other with a felony in connection with carrying a deadly weapon, could be accomplished by filing an information against the former and, upon indictment of his codefendant moving for joinder. D.C. Code § 22-3204; D.C. Code SCR, Criminal Rule 8(b). *Freeman v. Smith*, 301 A.2d 217, 1973 D.C. App. LEXIS 228 (1973).

Jurisdiction.

In view of statutes proscribing the carrying of a dangerous weapon and possession of prohibited weapon, prosecution had no authority to charge defendant as a "general" repeat offender for carrying a dangerous weapon and possessing a prohibited weapon, and as defendant received no proper and timely notice that he was subject to as much as ten years' imprisonment under the statutes specifically covering the offenses, defendant in effect was merely tried as a first offender on a misdemeanor and the District of Columbia Court of General Sessions did not lack jurisdiction on theory that defendant faced possibility of being sentenced to up to ten years in prison. D.C. Code §§ 11-963(a)(1), 22-104, 22-3204, 22-3214. *Martin v. United States*, 283 A.2d 448, 1971 D.C. App. LEXIS 231 (1971).

Jurisdiction of court of general sessions extended to prosecution for carrying a dangerous weapon, possessing a prohibited weapon and driving a motor vehicle without an operator's license, notwithstanding contention that trial court had jurisdiction only over offenses punishable by fine or imprisonment and that the offenses charged carried penalties of a fine, imprisonment, or both. D.C. Code §§ 22-3204, 22-3214(a), 40-301(d). *Martin v. United States*, 283 A.2d 448, 1971 D.C. App. LEXIS 231 (1971).

While statute provided for imprisonment for not more than 10 years on second conviction of carrying a dangerous weapon, where there was no proof that defendant had ever been convicted previously under such statute the felony penalty could not be invoked, so that charge that defendant was in unlawful possession of pistol after he had been previously convicted for carrying a dangerous weapon was within jurisdiction of District of Columbia Court of General Sessions, which could not impose fine of more

than \$1,000 or a sentence of longer than one year. D.C. Code 1961, §§ 22-3201 to 22-3216, 22-3203(4), 22-3204. *Burrell v. United States*, 223 A.2d 377, 1966 D.C. App. LEXIS 240 (App. 1966).

Juvenile adjudications.

Twenty-year-old defendant, who had been convicted of first-degree felony-murder, as well as attempted robbery while armed and carrying a dangerous weapon, in violation of District of Columbia law, was ineligible to receive an indeterminate adult sentence pursuant to statute governing fixing of eligibility for parole at time of sentencing, as recommended in report prepared in accordance with Federal Youth Corrections Act. D.C. Code §§ 22-2401, 22-2404, 22-3202, 22-3204; Fed. Rules Crim. Proc. rule 35, 18 U.S.C.; 18 U.S.C. §§ 4208(a)(2), 5010(e). *United States v. Tillman*, 374 F. Supp. 215, 1974 U.S. Dist. LEXIS 9524 (1974).

Trial court met requirements of Youth Rehabilitation Act by weighing and rejecting option of sentencing defendant under Act, for voluntary manslaughter, assault, and weapon convictions. D.C. Code 1981, §§ 22-502, 22-2405, 22-3202, 22-3204, 24-801 et seq. *Edwards v. United States*, 721 A.2d 938, 1998 D.C. App. LEXIS 223 (1998).

Adjudication of delinquency was warranted with respect to juvenile found carrying a pistol without a license. D.C. Code § 22-3204. In re E.F.B., 320 A.2d 95, 1974 D.C. App. LEXIS 218 (1974).

District of Columbia had right to appeal order of Family Division of Superior Court, entered at prehearing stage of juvenile delinquency proceeding, suppressing as evidence unregistered pistol and suppressing certain statements made by subject child prior to his arrest. D.C. Code §§ 16-2301, 16-2318, 22-3204, 23-104(a)(1); D.C. Code SCR, Juvenile Rules 11, 31(c). *District of Columbia v. M.E.H.*, 312 A.2d 561, 1973 D.C. App. LEXIS 395 (1973).

Trial judge's statement that it was almost inconceivable that youth, who had been convicted of two counts of assault with a dangerous weapon and one count of carrying a dangerous weapon, could be handled under Federal Youth Corrections Act in view of his prior convictions of armed robbery and assault with dangerous weapon, his extensive juvenile record and fact that he had repeatedly absconded from juvenile correctional facilities constituted a sufficient affirmative on-the-record finding that youth would not benefit from treatment under the Act and trial judge's refusal to sentence youth under the Act was within his discretion. D.C. Code §§ 22-502, 22-3204; 18 U.S.C. §§ 5005 et seq., 5006(e), 5010(b, d, e), 5025. *Paul v. United States*, 301 A.2d 226, 1973 D.C. App. LEXIS 240 (1973).

Defendant convicted of carrying a pistol without a license, in violation of District of Columbia Code, was not eligible for sentencing under Young Adult Offenders Act. D.C. Code § 22-3204; 18 U.S.C. §§ 4209, 5005 et seq.; Act of Aug. 25, 1958, 72 Stat. 847. *Atkinson v. United States*, 295 A.2d 899, 1972 D.C. App. LEXIS 269 (1972).

Lesser included offenses.

Assault with dangerous weapon is lesser included offense of assault with intent to rob while armed. D.C. Code §§ 22-501, 22-502, 22-3202, 22-3204. *United States v. Chavis*, 476 F.2d 1137, 1973 U.S. App. LEXIS 10719 (C.A.D.C. 1973).

Merger of offenses.

Defendant's convictions for possession of a firearm during a crime of violence (PFCV) and felony assaulting a police officer (APO) did not merge, though both offenses arose as a result of the single action of holding a gun, as each crime required proof of an element that the other did not, and, thus, were considered separate offenses. *Ball v. United States*, 26 A.3d 764, 2011 D.C. App. LEXIS 510 (2011).

Multiple convictions for possession of a firearm during a crime of violence (PFCV) did not merge; at each stage of the predicate crimes, specifically kidnapping, robbery, and burglary, defendant and his coconspirators reached a fork in the road where they could have desisted from their efforts. *Walker v. United States*, 982 A.2d 723, 2009 D.C. App. LEXIS 541 (2009).

Defendant's conviction for possession of a firearm during a crime of violence, stemming from his assault against victim, and his second conviction for possession of a firearm during a crime of violence, stemming from his assaults against police officers, did not merge because these crimes were not the result of a single action. *Scott v. United States*, 975 A.2d 831, 2009 D.C. App. LEXIS 249 (2009).

Three of defendant's four convictions for possession of a firearm during the commission of a crime of violence (PFCV) merged, as convictions were based on single possession of single weapon during violent act. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

Rule of lenity was not applicable to merge defendant's sentence enhancement for gun-related offenses with other sentence enhancement, even though defendant was sentenced to a maximum term of more than his natural life on each count; charges relating to the gun-related offenses were separate offenses, not the same offense. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S.

Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Defendant could be convicted of two counts of possession of a firearm during a crime of violence or dangerous offense (PFCV), as the predicate offenses of armed robbery and second-degree armed burglary did not merge, as each offense required proof of an element that the other did not. *Stevenson v. United States*, 760 A.2d 1034, 2000 D.C. App. LEXIS 248 (2000).

Convictions on two counts of possession of a firearm during a crime of violence or dangerous offense (PFCV) did not merge into predicate offenses of armed robbery and second-degree armed burglary. *Stevenson v. United States*, 760 A.2d 1034, 2000 D.C. App. LEXIS 248 (2000).

In general, where two predicate armed offenses do not merge, a defendant may be convicted of separate counts of possession of a firearm during a crime of violence or dangerous offense that relates to each offense; that is, as to each crime of violence or dangerous crime. *Stevenson v. United States*, 760 A.2d 1034, 2000 D.C. App. LEXIS 248 (2000).

Under "fork in the road" test, convictions on two counts of possession of a firearm during a crime of violence or dangerous offense (PFCV) did not merge; the predicate offenses of armed robbery and second-degree armed burglary were not committed simultaneously or as a single violent act, but, rather, defendant entered the store possessing the requisite intent to rob it, thereby completing the act of armed burglary, and then spent some time in the store and had an opportunity to reflect before deciding to continue to the armed robbery. *Stevenson v. United States*, 760 A.2d 1034, 2000 D.C. App. LEXIS 248 (2000).

Based on application of doctrine of lenity, defendant's convictions for possession of firearm during crime of violence (PFCV) arising from defendant's shooting into vehicle containing several occupants with single firearm merged into one PFCV conviction. D.C. Code 1981, § 22-3204(b). *Nixon v. United States*, 730 A.2d 145, 1999 D.C. App. LEXIS 88 (1999), writ of certiorari denied by 528 U.S. 899, 120 S. Ct. 233, 145 L. Ed. 2d 196, 1999 U.S. LEXIS 6211, 68 U.S.L.W. 3230 (1999).

Defendants who carried two unlicensed pistols at once could not be convicted on two counts of carrying a pistol without a license (CPWOL), and thus, their CPWOL convictions merged. D.C. Code 1981, § 22-3204. *Little v. United States*, 709 A.2d 708, 1998 D.C. App. LEXIS 50 (1998), writ of certiorari denied by 525 U.S. 851, 119 S. Ct. 126, 142 L. Ed. 2d 102, 1998 U.S. LEXIS 5342, 67 U.S.L.W. 3232 (1998).

Possession of firearm during crime of violence (PFCV) count did not merge with any

kidnapping "while armed" count, burglary while armed count, armed robbery count, or assault with dangerous weapon (ADW) count from same criminal incident. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2101, 22-2901, 22-3202, 22-3204(b). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

First-degree burglary while armed count did not merge with single carrying pistol without license (CPWL) count from same criminal incident, since burglary count required proof that defendant entered dwelling of another person while armed with or "having readily available" a weapon which CPWL did not, and CPWL count specifically required "carrying" operable, unlicensed pistol which burglary did not. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-3204(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Assault with dangerous weapon (ADW) counts did not merge with carrying pistol without license (CPWL) count from same criminal incident, as ADW required proof of attempt to injure while CPWL did not, and CPWL required proof of carrying pistol, which ADW did not. D.C. Code 1981, §§ 22-502, 22-3204(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Possession of a firearm during a crime of violence (PFCV) counts from two separate incidents did not merge; each time defendant committed independent violent crime, separate decision was made whether to possess firearm during crime. D.C. Code 1981, § 22-3204(b). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Possession of firearm during crime of violence (PFCV) count did not merge with carrying pistol without license (CPWL) count from same criminal incident. D.C. Code 1981, § 22-3204(a, b). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Possession of firearm during crime of violence (PFCV) count did not merge with possession of prohibited weapon (PPW) count from same criminal incident, since PFCV required proof that defendant possessed firearm while committing crime of violence, which PPW did not, and PPW required proof of possession of specifically prohibited weapon which PFCV did not. D.C. Code 1981, §§ 22-3204(b), 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Carrying pistol without license (CPWL) count did not merge with possession of prohibited weapon (PPW) count from same criminal incident, since CPWL required proof that defendant did not have license, which PPW did not, and PPW required proof of possession of specifically prohibited weapon, which CPWL did not. D.C. Code 1981, §§ 22-3204(a), 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Conviction for possession of firearm during crime of violence did not merge with predicate convictions for armed robbery, burglary while armed, and assault with intent to commit robbery while armed. D.C. Code 1981, § 22-3204(b). *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Regulations promulgated to implement statutes dealing with carrying a pistol without a license and possession of an unregistered firearm did not result in registration offense being included within license offense such that offenses merged and consecutive sentences could not be imposed without violating double jeopardy clause; registration offense would never be proven when license offense was unless additional evidence was presented showing that pistol had not been registered, and it was possible for pistol to be registered without person being licensed to carry pistol. D.C. Code 1981, §§ 6-2311(a), 22-3204(a); U.S. Const.Amend. 5. *Tyree v. United States*, 629 A.2d 20, 1993 D.C. App. LEXIS 185 (1993).

Once defendant's conviction for assault with dangerous weapon merged with conviction for attempted armed robbery, his related convictions for possession of firearm during crime of violence or dangerous offense also merged, as they concerned violations of same statute by same actions of placing gun against victim's stomach and demanding his money, and there was no indication of legislative intent to allow multiple sentences in such circumstances. D.C. Code 1981, §§ 22-502, 22-2901, 22-3204(b). *Morris v. United States*, 622 A.2d 1116, 1993 D.C. App. LEXIS 79 (1993), writ of certiorari denied by 510 U.S. 899, 114 S. Ct. 270, 126 L. Ed. 2d 221, 1993 U.S. LEXIS 6183, 62 U.S.L.W. 3252 (1993).

Defendant's convictions of carrying pistol without license and possession of firearm during crime of violence or dangerous offense did not merge and, thus, imposition of separate sentences for the offenses did not violate double jeopardy clause, considering legislative intent and elements of offenses. D.C. Code 1981, § 22-3204(a, b); U.S. Const.Amend. 5. *Ray v. United States*, 620 A.2d 860, 1993 D.C. App. LEXIS 37 (1993).

Council of the District of Columbia did not intend for offense of possession of a firearm during a dangerous crime to merge with an offense subject to enhanced penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon. D.C. Code 1981, §§ 22-3202, 22-

3204(b). *Thomas v. United States*, 602 A.2d 647, 1992 D.C. App. LEXIS 23 (1992).

Offenses of assault with dangerous weapon and possession of firearm during commission of crime of violence did not merge because each required proof of element that the other did not, and each addressed distinct societal interest. D.C. Code 1981, §§ 22-502, 22-3204(b). *Freeman v. United States*, 600 A.2d 1070, 1991 D.C. App. LEXIS 334 (1991).

Convictions for offenses of possession of unregistered firearm and possession of unregistered ammunition did not merge with defendant's conviction for carrying unlicensed pistol, since registration offenses concerned firearm in question while licensing offense related to personal qualifications of particular individual to carry pistol in district. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Irby v. United States*, 585 A.2d 759, 1991 D.C. App. LEXIS 10 (1991).

Defendants' convictions for felony-murder while armed and the underlying felony of first-degree burglary while armed merged, and thus, case would be remanded with instructions to vacate the armed burglary conviction. D.C. Code 1981, §§ 22-1801(a), 22-2401, 22-3202, 22-3204; 18 U.S.C. §§ 5005 et seq., 5010(c). *Williams v. United States*, 483 A.2d 292, 1984 D.C. App. LEXIS 524 (1984), writ of certiorari denied by 474 U.S. 906, 106 S. Ct. 275, 88 L. Ed. 2d 236, 1985 U.S. LEXIS 4003 (1985).

Offense of carrying pistol without license does not merge into offense of armed robbery. D.C. Code §§ 22-2901, 22-3202, 22-3204. *Rouse v. United States*, 402 A.2d 1218, 1979 D.C. App. LEXIS 371 (1979).

Convictions for first-degree burglary, robbery and assault with a dangerous weapon merged with more serious offenses, i.e., burglary in first degree while armed and armed robbery, and case was accordingly remanded with instructions to vacate convictions and related sentences for the first-mentioned convictions. D.C. Code §§ 22-502, 22-1801, 22-2901, 22-3202, 22-3204. *Evans v. United States*, 392 A.2d 1015, 1978 D.C. App. LEXIS 327 (1978).

Nature and elements of offenses.

— Carriage for purpose of surrender of weapon, nature and elements of offenses.

By surrendering firearms to capitol police, defendant did not comply with statutory requirement that firearm be delivered "to the Chief" and was not immune from weapons prosecution under statute immunizing one whose possession of weapon was solely in order to surrender it to police custody; capitol police were not designated agents of chief of the metropolitan police for purpose of receiving surrendered firearms. D.C. Code 1981, §§ 6-

2302(4), 6-2375(a). *Stein v. United States*, 532 A.2d 641, 1987 D.C. App. LEXIS 468 (1987), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705, 1988 U.S. LEXIS 1712, 56 U.S.L.W. 3718 (1988).

By delivering firearms and ammunition to capitol police officer at guard desk, defendant did not comply with statutory requirement to "abandon" firearms and was not immune from weapons prosecution under statute immunizing one whose possession of weapon was solely to deliver and abandon it to police; defendant, who had been employed as bodyguard for United States senator, indicated that he fully intended to retrieve guns and ammunition from capitol police when he left building so that he could take them with him on trip to South America. D.C. Code 1981, § 6-2375(a). *Stein v. United States*, 532 A.2d 641, 1987 D.C. App. LEXIS 468 (1987), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705, 1988 U.S. LEXIS 1712, 56 U.S.L.W. 3718 (1988).

Statute providing immunity from weapons prosecution for one whose possession of weapon was solely in order to surrender it to police custody is restricted to violations of Firearms Control Regulations Act of 1975, and does not grant immunity from prosecution for any other firearm offenses. D.C. Code 1981, § 6-2375(a). *Stein v. United States*, 532 A.2d 641, 1987 D.C. App. LEXIS 468 (1987), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705, 1988 U.S. LEXIS 1712, 56 U.S.L.W. 3718 (1988).

— Carriage in dwelling, business place or property, nature and elements of offenses.

The statute prohibiting a person from carrying a pistol without a license "except in his dwelling house or place of business or on other land possessed by him" manifests the intent that the "place of business" referred to is land and would not apply so as to exempt a taxicab driver who carried a pistol without a license while in his taxicab, since the cab would not be the driver's "place of business". D.C. Code 1940, § 22-3204. *U.S. v. Waters*, 73 F.Supp. 72, 1947 U.S. Dist. LEXIS 2253 (D.D.C.1947).

Defendant could not be convicted for carrying pistol without license absent evidence that he set foot outside his store while possessing weapon. D.C. Code 1981, § 22-3204. *Yoon v. United States*, 594 A.2d 1056, 1991 D.C. App. LEXIS 199 (1991), amended by 610 A.2d 1388, 1992 D.C. App. LEXIS 186 (D.C. 1992).

Exception to the prohibition of carrying a dangerous weapon, applicable to a person "in his dwelling house," does not apply to the curtilage of the residence. D.C. Code 1981, § 22-3204. *Fortune v. United States*, 570 A.2d 809, 1990 D.C. App. LEXIS 42 (1990).

Within statute proscribing carrying a dangerous weapon, exception for possession of a weapon on land possessed by the defendant applies only to a defendant who has a possessory interest in the land on which he or she is arrested; such an interest entails more than right to be physically present on the property, and encompasses also a right to exclude. D.C. Code 1981, § 22-3204. *Fortune v. United States*, 570 A.2d 809, 1990 D.C. App. LEXIS 42 (1990).

Whatever rights defendant may have had within his own room in his aunt's house, where he was temporarily living, or even in other portions of the dwelling, he made no showing that he had any possessory interest in the backyard, in which he was carrying nunchaku sticks, within exception to the statutory prohibition of carrying a dangerous weapon. D.C. Code 1981, § 22-3204. *Fortune v. United States*, 570 A.2d 809, 1990 D.C. App. LEXIS 42 (1990).

A taxicab is not a "place of business" within purview of statute providing that license for gun is not required for those who keep gun in homes or place of business. D.C. Code 1981, § 22-3204. *Yirenkyi v. District of Columbia Hackers' License Appeal Bd.*, 520 A.2d 328, 1987 D.C. App. LEXIS 283 (1987).

Vending van was not "place of business" within meaning of statute making carrying of pistol without a license a criminal offense, except where said pistol is carried in one's dwelling house or place of business or on other land possessed by carrier. D.C. Code §§ 6-1811(a), 6-1861(c), 22-3204. *Billinger v. United States*, 425 A.2d 1304, 1981 D.C. App. LEXIS 215 (1981).

"Place of business" exception to statute proscribing carrying pistol without license does not expressly nor implicitly create exception allowing person "in charge" of premises to carry pistol without license, rather, the exception refers to proprietary or possessory, not merely managerial interest. D.C. Code § 22-3204. *Scott v. United States*, 392 A.2d 4, 1978 D.C. App. LEXIS 316 (1978).

Statutory proscription of carrying a pistol without a license outside possessor's "dwelling house or place of business" is a congressional recognition of the inherent risk of harm to the public of such a dangerous instrumentality being carried about the community and away from residence or business of the possessor. D.C. Code § 22-3204. *United States v. Walker*, 380 A.2d 1388, 1977 D.C. App. LEXIS 302 (1977).

Lab technician in blood unit of local hospital, who was arrested at his place of employment for offense for which he was ultimately found not guilty by jury but who was subsequently

charged with statutory violation based on his possession at time of prior arrest of loaded pistol for which he had no license did not fall within "place of business" exception to statute prohibiting any person from carrying deadly weapon without a license. D.C. Code § 22-3204. *Berkley v. United States*, 370 A.2d 1331, 1977 D.C. App. LEXIS 429 (1977).

In reference to statute prohibiting any person from carrying deadly weapon without license except in his dwelling house or place of business or on other land possessed by him, common understanding of "place of business" read in context with "dwelling house" or "other land possessed" is one of a protectable possessory interest; accordingly, "place of business" exception is applicable only to those who have controlling, proprietary or possessory interest in business premises in question. D.C. Code § 22-3204. *Berkley v. United States*, 370 A.2d 1331, 1977 D.C. App. LEXIS 429 (1977).

Where porch on which defendant and his girl friend struggled over pistol allegedly found by defendant was part of apartment building in which defendant and others lived, defendant was not within exception from pistol licensing requirement provided for person who carries weapon in his dwelling house or on other land possessed by him. D.C. Code § 22-3204. *Hines v. United States*, 326 A.2d 247, 1974 D.C. App. LEXIS 288 (1974).

Words "dwelling house" and "land possessed by him," within statute providing that no person shall carry a pistol without a license except in his dwelling house, place of business or on other land possessed by him, would not be read to include entire apartment building. D.C. Code § 22-3204. *White v. United States*, 283 A.2d 21, 1971 D.C. App. LEXIS 224 (1971).

Defendant's possession of unlicensed pistol in apartment house hallway on floor above his own apartment was not within exception to statute providing that no person shall carry a pistol without a license, except in his dwelling house, place of business or on other land possessed by him, since defendant did not have exclusive control and possession of the hallway on the floor above his apartment. D.C. Code § 22-3204. *White v. United States*, 283 A.2d 21, 1971 D.C. App. LEXIS 224 (1971).

Under statute prohibiting the carrying of a weapon "except in his dwelling house or place of business or on other land possessed by him", a person need not be a sole rather than part owner of the premises involved. D.C. Code § 22-3204. *Roumel v. United States*, 261 A.2d 240, 1970 D.C. App. LEXIS 203 (App. 1970).

Under the statute prohibiting the carrying of a pistol "without a license" except in a dwelling house or place of business, quoted phrase is not an exception, but is a descriptive negative de-

fining the corpus delicti. D.C. Code 1940, § 22-3204. *Brown v. U.S.*, 66 A.2d 491, 1949 D.C. App. LEXIS 200 (Cr.App. 1949).

— **Constructive possession, nature and elements of offenses.**

Constructive possession of a weapon and ammunition may be sole or joint. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

Constructive possession by itself is not sufficient to sustain a conviction for carrying a pistol without a license; because “possession” is a broader concept than to “carry on or about the person,” the government’s evidence must go beyond mere proof of constructive possession and must show that the pistol was in such proximity to the person as to be convenient of access and within reach. *In re R.G.*, 917 A.2d 643, 2007 D.C. App. LEXIS 79 (2007).

In reviewing the sufficiency of evidence to support a conviction, when the issue is one of constructive possession, the government must show that the defendant (1) knew of the contraband’s presence and (2) had the ability and intent to exercise dominion and control over it. *Smith v. United States*, 899 A.2d 119, 2006 D.C. App. LEXIS 217 (2006).

In constructive possession cases, simple proximity to contraband generally does not alone support an inference beyond a reasonable doubt that the accused had the requisite intent to exercise dominion and control over it, particularly where others are in similar proximity. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

In order for the defendant to be found guilty of carrying a pistol without a license (CPWL) under a constructive possession theory, the jury must find that the defendant not only had constructive possession of the weapon, but that the weapon was conveniently accessible to and within reach of the defendant. *Johnson v. United States*, 840 A.2d 1277, 2004 D.C. App. LEXIS 4 (2004).

In regard to possessory weapons offenses, “actual possession” is defined as the ability of an individual to knowingly exercise direct physical custody or control over the weapon, while “constructive possession” exists where a person is knowingly in a position or has the right to exercise dominion and control over the weapon. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Constructive possession by itself is not sufficient to sustain conviction for carrying pistol without a license (CPWL); evidence must go beyond mere proof of constructive possession and must show that pistol was in such proximity to the person as to be convenient of access and within reach. D.C. Code 1981, § 22-

3204(a). *White v. United States*, 714 A.2d 115, 1998 D.C. App. LEXIS 113 (1998).

Defendants could not be convicted of carrying a pistol without a license on theory of constructive possession where third person had control of the pistol at all times, even though he was engaged in joint criminal activity with defendants. *Jefferson v. United States*, 558 A.2d 298, 1989 D.C. App. LEXIS 69 (1989), writ of certiorari denied by 493 U.S. 1032, 110 S. Ct. 748, 107 L. Ed. 2d 765, 1990 U.S. LEXIS 294, 58 U.S.L.W. 3428 (1990).

In determining whether defendant had constructive possession of weapon, court inquires whether defendant knew of presence of weapon, and whether he had dominion and control over it. D.C. Code 1981, § 22-3204. *Brown v. United States*, 546 A.2d 390, 1988 D.C. App. LEXIS 135 (1988).

Fact of constructive possession does not depend upon ownership. D.C. Code § 22-3204. *Jones v. United States*, 299 A.2d 538, 1973 D.C. App. LEXIS 215 (1973).

— **Crimes of violence, nature and elements of offenses.**

Offense of assault with significant bodily injury was not a crime of violence, and thus, defendant should not have been charged with assault with significant bodily injury while armed or with a related count of possessing a firearm during a crime of violence (PFCV), which increased his potential term of imprisonment. *Colter v. United States*, 37 A.3d 282, 2012 D.C. App. LEXIS 63 (2012), writ of certiorari denied by 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8443, 81 U.S.L.W. 3229 (U.S. 2012).

Conviction for possession of firearm during crime of violence did not merge with one for carrying dangerous weapon; carrying dangerous weapon did not require proof that defendant possessed firearm during commission of crime of violence or dangerous crime. *Matthews v. United States*, 892 A.2d 1100, 2006 D.C. App. LEXIS 10 (2006).

Offense of assault on a police officer is among “crimes of violence” upon which liability for possession of a firearm during a crime of violence or dangerous crime (PFCV) must be based. D.C. Code 1981, §§ 22-3201(f), 22-3204(b). *Holt v. United States*, 675 A.2d 474, 1996 D.C. App. LEXIS 67 (1996), writ of certiorari denied by 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117, 1996 U.S. LEXIS 5456, 65 U.S.L.W. 3261 (1996).

Offense of assault of police officer with dangerous weapon could be predicate offense for conviction of possession of firearm while committing crime of violence even though assault on police officer with dangerous weapon was not specifically listed as crime of violence. D.C.

Code 1981, §§ 22-3201(f), 22-3204(b). *Parks v. United States*, 627 A.2d 1, 1993 D.C. App. LEXIS 135 (1993).

— Deadly or dangerous weapon, nature and elements of offenses.

Two categories of objects are likely to produce the requisite harm to constitute “deadly or dangerous weapons” within the meaning of the District of Columbia statute prohibiting the carrying of “any deadly or dangerous weapon”: (1) those that are inherently dangerous, i.e., where the design of the object is such that in its ordinary use it is likely to cause great bodily injury, and (2) those that ostensibly may be used as a tool in certain trades or hobbies or may be carried for utilitarian reasons, but where the surrounding circumstances indicate that the purpose of carrying the object is its use as a weapon. *United States v. Vinton*, 594 F.3d 14, 2010 U.S. App. LEXIS 2450 (C.A.D.C. 2010), writ of certiorari denied by 131 S. Ct. 93, 178 L. Ed. 2d 58, 2010 U.S. LEXIS 5909, 79 U.S.L.W. 3197 (U.S. 2010).

A sawed-off shotgun—whether loaded or not—is an inherently dangerous object, for purposes of charge of carrying a dangerous or deadly weapon, because of its ordinary use as contemplated by its design and construction. *Wright v. United States*, 926 A.2d 1151, 2007 D.C. App. LEXIS 393 (2007).

A “deadly or dangerous weapon,” for purposes of charge of carrying a dangerous or deadly weapon, is one which is likely to produce death or great bodily injury by the use made of it; such instrument may be dangerous in its ordinary use as contemplated by its design and construction, or where the purpose of carrying the object, under the circumstances, is its use as a weapon. *Wright v. United States*, 926 A.2d 1151, 2007 D.C. App. LEXIS 393 (2007).

Even if a weapon has not been altered, the design or construction itself is relevant when determining whether it is a “dangerous weapon.” *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

An object’s inherently dangerous design or the fact that the object need not be altered for effectiveness as a weapon, when combined with the surrounding circumstances, can be the determining factor as to whether it is a “dangerous weapon.” *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

Test to be applied in determining whether item is deadly or dangerous weapon is whether, under circumstances, purpose of carrying item was its use as weapon. D.C. Code 1981, §§ 22-3204, 22-3214. *Peay v. United States*, 597 A.2d 1318, 1991 D.C. App. LEXIS 277 (1991).

Conviction for carrying a dangerous weapon could not be affirmed based on speculation that, if attacked, defendant might use his inoperable air pistol to strike someone in self-defense, even

though defendant allegedly stated that he might defend himself in that way. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Test to be applied in determining whether kitchen knife was a “deadly or dangerous weapon”, within statute prohibiting carrying either openly or concealed on or about person any deadly or dangerous weapon capable of being concealed, was whether, under the circumstances, purpose of carrying such knife was its use as weapon. D.C. Code § 22-3204. *Nelson v. United States*, 280 A.2d 531, 1971 D.C. App. LEXIS 191 (1971).

Where defendant was carrying razor in company of armed companion in crowded, commercial area of city in late afternoon, and defendant was apprehended in alley at approach of police officer investigating citizen’s report concerning him, jury was sufficiently apprised of circumstances sufficiently probative to allow them to conclude beyond reasonable doubt that razor was being carried as deadly or dangerous weapon. D.C. Code § 22-3204. *Clarke v. United States*, 256 A.2d 782, 1969 D.C. App. LEXIS 310 (App. 1969).

A “deadly or dangerous weapon” is one which is likely to produce death or great bodily injury by the use made of it. D.C. Code § 22-3204. *Scott v. United States*, 243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

Instrument may be dangerous in its ordinary use as contemplated by its design and construction, or where the purpose of carrying the object, under the circumstances, is its use as a weapon. D.C. Code § 22-3204. *Scott v. United States*, 243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

Under certain circumstances a hawk-bill knife can be a “dangerous weapon” within statute. D.C. Code § 22-3204. *Best v. United States*, 237 A.2d 825, 1968 D.C. App. LEXIS 125 (App. 1968).

Hawk-billed linoleum clasp knife with three and a half-inch blade altered to open 270 degrees was properly determined to be a “deadly weapon” and was unlawfully carried. D.C. Code § 22-3204. *Perry v. United States*, 230 A.2d 721, 1967 D.C. App. LEXIS 174 (App. 1967).

— Different offenses in same transaction, nature and elements of offenses.

Dual convictions under federal statute governing offense of unlawfully carrying a firearm during commission of a felony and under District of Columbia criminal code governing underlying offense of carrying a firearm without a license were not authorized. D.C. Code § 22-3204; 18 U.S.C. § 924(c)(2). *United States v. Dorsey*, 591 F.2d 922, 1978 U.S. App. LEXIS 6845 (C.A.D.C. 1978).

Dual convictions under federal statute governing offense of receiving a pistol in interstate

commerce with serial number removed and under statute governing offense of unlawfully carrying a firearm during commission of felony or District of Columbia criminal code governing offense of carrying a firearm without a license were consistent with congressional intent. 18 U.S.C. §§ 921 et seq., 922(a-m, d, h, k), 924(c)(2); D.C. Code § 22-3204. *United States v. Dorsey*, 591 F.2d 922, 1978 U.S. App. LEXIS 6845 (C.A.D.C. 1978).

Defendant could be properly charged and convicted of not only federal bank robbery but also under District of Columbia statute relating to carrying of a dangerous weapon, since federal bank robbery statute was unconcerned with the type of weapon person might use or with his right under local law to carry such weapon. 18 U.S.C. § 2113(a); D.C. Code §§ 22-502, 22-3204. *United States v. Cauty*, 469 F.2d 114, 1972 U.S. App. LEXIS 7278 (C.A.D.C. 1972).

A single possession of a single firearm during a single violent act gives rise to only a single conviction for possession of a firearm during a crime of violence or dangerous offense. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Fact that the evidence was insufficient to establish that defendant possessed drugs within 1,000 feet of a school, as required for conviction of possession with intent to distribute cocaine in a drug free zone, did not require acquittal of conviction for possession of a firearm during commission of a dangerous crime; even without distance element being met, conviction of lesser offense of drug charge was valid, and this formed the necessary predicate for the weapon conviction. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Under statute providing that no person shall possess pistol or any other firearm while committing crime of violence or dangerous crime, where defendant's convictions for assault with dangerous weapon and attempted armed robbery merge to become one "crime of violence or dangerous crime," there can be only one associated offense of possession of firearm during crime of violence. D.C. Code 1981, §§ 22-502, 22-2901, 22-3204(b). *Morris v. United States*, 622 A.2d 1116, 1993 D.C. App. LEXIS 79 (1993), writ of certiorari denied by 510 U.S. 899, 114 S. Ct. 270, 126 L. Ed. 2d 221, 1993 U.S. LEXIS 6183, 62 U.S.L.W. 3252 (1993).

Defendant's conduct in carrying both knife and sawed-off .22 caliber rifle constituted single, not multiple, violation of statute prohibiting carrying dangerous weapon. D.C. Code 1981, § 22-3204. *Bean v. United States*, 576

A.2d 187, 1990 D.C. App. LEXIS 130 (1990), remanded by 606 A.2d 770, 1992 D.C. App. LEXIS 100 (D.C. 1992).

The offense of "carrying a weapon" is continuous and may be committed by a person who is moving from place to place; a second offense does not arise until the continuity of the first act is broken. D.C. Code 1981, § 22-3204. *Bruce v. United States*, 471 A.2d 1005, 1984 D.C. App. LEXIS 311 (1984).

One of defendant's two convictions for carrying a pistol without a license would be vacated where, although defendant was involved in two shooting incidents which occurred on two successive days, defendant's possession of the pistol was continuous for eight hours during which defendant did not return to land possessed by him where he might lawfully carry the weapon. D.C. Code 1981, § 22-3204. *Bruce v. United States*, 471 A.2d 1005, 1984 D.C. App. LEXIS 311 (1984).

— Homicide in commission of or attempt to commit offense, nature and elements of offenses.

Involuntary manslaughter may occur as a result of an unlawful act which is a misdemeanor involving danger of injury. D.C. Code §§ 22-2405, 22-3204. *Walker v. United States*, 403 A.2d 1163, 1979 D.C. App. LEXIS 420 (1979).

The carrying of a pistol without a license is an unlawful act within the rule that involuntary manslaughter may occur as the result of unlawful act which is a misdemeanor involving danger of injury. D.C. Code §§ 22-2405, 22-3204. *Walker v. United States*, 403 A.2d 1163, 1979 D.C. App. LEXIS 420 (1979).

The crime of carrying a pistol without a license exposes the community to such inherent risk of harm that, when death results, even though an unintended consequence, the defendant may nonetheless be charged with involuntary manslaughter; the risk of the crime does not decrease when the resulting death is unforeseeable, because of a pistol's hidden defects, as well as unintended. D.C. Code §§ 22-2405, 22-3204. *Walker v. United States*, 403 A.2d 1163, 1979 D.C. App. LEXIS 420 (1979).

Carrying a pistol without a license exposes the community to such inherent risk of harm that when death results, even though an unintended consequence, defendant may nonetheless be charged with involuntary manslaughter. D.C. Code § 22-3204. *United States v. Walker*, 380 A.2d 1388, 1977 D.C. App. LEXIS 302 (1977).

A violation of statutory proscription against carrying a pistol without a license, if it results in shooting and death of another, constitutes involuntary manslaughter because violation is dangerous in and of itself. D.C. Code § 22-

3204. *United States v. Walker*, 380 A.2d 1388, 1977 D.C. App. LEXIS 302 (1977).

— In general.

To establish a defendant's guilt of carrying a dangerous weapon, the government must prove beyond a reasonable doubt that: (1) the defendant carried an object in an open or concealed manner; (2) the object was likely to produce death or great bodily injury by the manner in which it was used or threatened to be used; (3) the defendant intended to do the acts that constituted carrying the weapon; and (4) the defendant intended to use the object as a dangerous weapon. *Savage-El v. United States*, 902 A.2d 120, 2006 D.C. App. LEXIS 357 (2006).

The requirements of carrying a pistol without a license (CPWL) are: (1) carrying a pistol, either openly or concealed on one's person, outside one's own dwelling or place of business, or other land possessed by the defendant and (2) without a license to do so. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

The essential elements of the offense of carrying a pistol without a license are: (1) carrying an operable pistol; (2) without a license; and (3) with the intent to do those two acts. *Price v. United States*, 813 A.2d 169, 2002 D.C. App. LEXIS 723 (2002).

Elements of offense of carrying pistol without license are carrying operable pistol, without license, and with requisite intent. D.C. Code 1981, § 22-3204(a). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

It is not simply possession of, but rather the use of an instrument and the circumstances surrounding its use which render it dangerous for purposes of dangerous weapons statute. D.C. Code 1981, § 22-3204. In re S.P., 465 A.2d 823, 1983 D.C. App. LEXIS 453 (1983).

Offense of carrying pistol without license has three essential elements: carrying operable pistol, without license, and with intent to do those two acts. D.C. Code § 22-3204. *Tucker v. United States*, 421 A.2d 32, 1980 D.C. App. LEXIS 378 (1980).

Offense of carrying a pistol without a license has three essential elements: carrying an operable pistol, without a license, with intent to do those two acts. D.C. Code § 22-3204. *Jackson v. United States*, 395 A.2d 99, 1978 D.C. App. LEXIS 573 (1978).

— Intent or purpose, nature and elements of offenses.

Evidence was sufficient to prove that juvenile carried knife for purpose of using it as a dangerous weapon, as would support delinquency adjudication for carrying a dangerous weapon; knife was a folding knife with a nearly three-inch blade, juvenile carried knife in his pocket in open position, and juvenile, who fled from

officer, hid in a crouched position behind car, in dark, and wore gloves. In re M.L., 24 A.3d 63, 2011 D.C. App. LEXIS 368 (2011).

Since the unloaded, sawed-off shotgun in defendant's possession was an inherently dangerous weapon, the government did not need to offer further proof that defendant intended to use the shotgun as a dangerous weapon in order to convict him of carrying a dangerous or deadly weapon. *Wright v. United States*, 926 A.2d 1151, 2007 D.C. App. LEXIS 393 (2007).

In a prosecution for carrying a dangerous weapon, the government is not required to establish a specific intent to use the weapon for an unlawful purpose. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

Since not all knives are per se dangerous weapons, the ultimate test for determining whether, under the circumstances, a knife is dangerous or deadly is the purpose for which it is carried. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

The carrying of an otherwise useful object is outlawed where the surrounding circumstances, such as the time and place the defendant was found in possession of such an instrument, or the alteration of the object, indicate that the possessor would use the instrument for a dangerous purpose. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

Carrying pistol without a license is general intent crime and has no scienter requirement that defendant intended to use weapon for unlawful purpose. D.C. Code 1981, § 22-3204. *Bieder v. United States*, 707 A.2d 781, 1998 D.C. App. LEXIS 38 (1998).

Carrying pistol without a license, possession of unregistered firearm, and possession of unregistered ammunition are general intent crimes, and no specific intent to use gun (or ammunition) need be proved in order to obtain conviction. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204. *Bsharah v. United States*, 646 A.2d 993, 1994 D.C. App. LEXIS 143 (1994).

Defendant who carried knife in briefcase into government office building could properly be found to have been carrying knife for use as dangerous weapon, as element of crime of carrying dangerous weapon in public place; though defendant was attempting to check weapon with police and had no intent to make immediate use of it, defendant's intent in carrying weapon, for protection and in his work as bodyguard, justified conclusion that his intent in carrying knife was for use as dangerous weapon. D.C. Code 1981, § 22-3204. *Monroe v. United States*, 598 A.2d 439, 1991 D.C. App. LEXIS 292 (1991).

Some factors to consider in trial for carrying dangerous weapon when determining whether defendant intended to use object as dangerous weapon are design of instrument, conduct of defendant prior to his arrest, any physical

alteration of object, and time and place of its possession. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

In determining whether one's purpose in carrying an object was its use as a deadly or dangerous weapon, the fact finder must consider the circumstances surrounding its possession and use, and such circumstances include, *inter alia*, the design or construction of the instrument, the conduct of the defendant prior to his arrest, any physical alteration of the instrument, and the time and place the defendant was found in possession. D.C. Code 1981, § 22-3204. *In re S.P.*, 465 A.2d 823, 1983 D.C. App. LEXIS 453 (1983).

Proof of intent to use a weapon for an unlawful purpose is not an element of the crime of carrying a concealed weapon. D.C. Code 1981, § 22-3204. *Mackey v. United States*, 451 A.2d 887, 1982 D.C. App. LEXIS 462 (1982).

Specific intent element of possession of prohibited weapon with intent to use it unlawfully against another provides basis for broader defense than defenses available for general intent weapons offenses. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

Common-law criminal intent element does not apply to offense of carrying a pistol without a license; intent required is intent to carry the pistol, not intent to carry it without a license, and defendant cannot effectively rely on a contention that he was unaware of the law. D.C. Code § 22-3204. *McMillen v. United States*, 407 A.2d 603, 1979 D.C. App. LEXIS 482 (1979).

A defendant's actions alone would rarely suffice to demonstrate innocent intent, in regard to carrying pistol without license, and declaration of such an intent alone generally would not suffice, but, rather, totality of circumstances must indicate that defendant had requisite intent and was acting consistent therewith. D.C. Code § 22-3204. *Logan v. United States*, 402 A.2d 822, 1979 D.C. App. LEXIS 384 (1979).

Statute prohibiting carrying a pistol without a license is a statute of general intent; proof of intent to use the weapon for an unlawful purpose is not an element of the crime. D.C. Code § 22-3204. *Carey v. United States*, 377 A.2d 40, 1977 D.C. App. LEXIS 363 (1977).

Proof of intent to use a weapon for an unlawful purpose is not an element of offense of carrying a pistol without a license. D.C. Code § 22-3204. *Mitchell v. United States*, 302 A.2d 216, 1973 D.C. App. LEXIS 251 (1973).

Proof of intent to use knife to menace or inflict bodily harm is not required under statute proscribing carrying a deadly or dangerous weapon. D.C. Code § 22-3204. *Leftwitch v.*

United States, 251 A.2d 646, 1969 D.C. App. LEXIS 224 (App. 1969).

Where police officer observed defendant walking along a street looking into parked automobiles and trying their door handles, officer pulled abreast of defendant in patrol automobile, defendant quickly withdrew behind nearby tree, officer got out of automobile and approached defendant who reached behind his back and pulled large butcher knife from his belt, in area of small of his back, and threw it to ground in tree box space, test as to whether defendant was carrying deadly or dangerous weapon in violation of statute was whether purpose of carrying butcher knife was its use as weapon. D.C. Code § 22-3204. *Leftwitch v. United States*, 251 A.2d 646, 1969 D.C. App. LEXIS 224 (App. 1969).

Statute prohibiting carrying of concealed deadly or dangerous weapon outlaws carrying of otherwise useful object where the surrounding circumstances, such as the time and place the defendant was found in possession of such instrument, or the alteration of the object, indicate that the possessor would use the instrument for a dangerous purpose. D.C. Code § 22-3204. *Scott v. United States*, 243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

Under statute prohibiting carrying of concealed deadly or dangerous weapon, proof of intent to use knife for unlawful purpose is not element of the offense. D.C. Code § 22-3204. *Scott v. United States*, 243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

— Justification or excuse, nature and elements of offenses.

Defendant's possession of loaded pistol as he carried it from his car to United States Capitol building was not excused and justified as stemming from affirmative effort to aid and enhance social policy underlying law enforcement, as required to assert defense of innocent possession to charge of carrying pistol without a license; his deliberate action of loading the pistol, which had been unloaded and locked away, presented a new peril to community. D.C. Code 1981, § 22-3204. *Bieder v. United States*, 707 A.2d 781, 1998 D.C. App. LEXIS 38 (1998).

Justifiable carrying of an unlicensed pistol, as a defense to a charge of carrying pistol without license, only exists and applies during course of the exigencies of the occasion. D.C. Code § 22-3204. *Logan v. United States*, 402 A.2d 822, 1979 D.C. App. LEXIS 384 (1979).

In regard to "innocent possession" exception to statute prohibiting the carrying of a pistol without a license, a person's intent to aid and enhance social policy underlying law enforcement may be demonstrable, in part, by his actions when he picks up a pistol to protect himself or others from harm or to otherwise secure it. D.C. Code § 22-3204. *Logan v. United*

States, 402 A.2d 822, 1979 D.C. App. LEXIS 384 (1979).

Defendant's purpose of showing new found pistol to his girl friend did not amount to innocent or momentary possession such as would be a defense to charge of carrying pistol without a license. D.C. Code §§ 22-3204, 22-3205. *Hines v. United States*, 326 A.2d 247, 1974 D.C. App. LEXIS 288 (1974).

Statute prohibiting carrying of concealed deadly or dangerous weapon does not prohibit carrying of knives for a legitimate purpose. D.C. Code § 22-3204. *Scott v. United States*, 243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

— Knowledge and control of weapon, nature and elements of offenses.

Location of gun in box of potato chips in back of ice cream truck did not present any obstacle denying defendant, who was driver, convenient access to weapon or placing it beyond his reach, so as to preclude conviction for carrying pistol without a license (CPWL) based on theory of constructive possession. D.C. Code 1981, § 22-3204(a). *White v. United States*, 714 A.2d 115, 1998 D.C. App. LEXIS 113 (1998).

Person who has no knowledge that he or she has pistol, despite fact that it is located on his or her person, does not exercise direct physical control over pistol for purposes of prosecution for carrying pistol without license under constructive possession theory. D.C. Code 1981, § 22-3204. *Campos v. United States*, 617 A.2d 185, 1992 D.C. App. LEXIS 288 (1992).

— Manner of carrying or concealment, nature and elements of offenses.

The defendant's conduct immediately prior to his arrest for carrying a dangerous weapon may be relevant in determining whether the instrument in question was carried for use as a "dangerous weapon." *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

As a matter of law, a pistol stored in the trunk of a defendant's vehicle was not being carried "on or about" the person for purposes of offense of carrying a pistol without a license, notwithstanding government's reliance on theory of constructive possession; possession and carrying are different concepts, and location of the pistol in the locked trunk presented an obstacle to defendant's ready access. D.C. Code 1981, § 22-3204(a). *Henderson v. United States*, 687 A.2d 918, 1996 D.C. App. LEXIS 264 (1996).

Under statute, which makes it a crime to carry a pistol without a license, there is no per se rule deeming all passengers in a motor vehicle to be carrying pistol which only one of them has been seen to possess or control; to support a conviction for carrying a pistol without a license, record must show some facts

manifesting possession, or at least convenient access. D.C. Code § 22-3204. *Jackson v. United States*, 395 A.2d 99, 1978 D.C. App. LEXIS 573 (1978).

— Operability of weapon, nature and elements of offenses.

Semiautomatic pistol capable of firing 13 consecutive shots without reloading when equipped with properly functioning magazine was "machine gun," within meaning of statute outlawing its possession, even though defendant's magazine was defective and did not automatically reload weapon. D.C. Code 1981, §§ 22-3201(c), 22-3214(a). *United States v. Woodfolk*, 656 A.2d 1145, 1995 D.C. App. LEXIS 77 (1995), writ of certiorari denied by 516 U.S. 1183, 116 S. Ct. 1286, 134 L. Ed. 2d 231, 1996 U.S. LEXIS 1934, 64 U.S.L.W. 3624 (1996).

Inoperable air pistol did not constitute "dangerous weapon," within meaning of statute prohibiting the carrying of "dangerous weapon," where pistol was not inherently dangerous due to its inoperability, and defendant did not use it in manner which rendered it so. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Person who uses imitation firearm to frighten others will not be subject to prosecution for carrying dangerous weapon when that person does not attempt to coerce those people to cooperate in some other criminal act. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Imitation firearm does not constitute "dangerous weapon," within meaning of statute prohibiting the carrying of "dangerous weapon." D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Pistol must be operable to support conviction for carrying pistol without license. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Mere fact that defendant's inoperable air pistol looked like ".357 magnum" handgun, and that defendant carried it in manner intended to frighten others, did not show that pistol was "dangerous weapon," within meaning of statute prohibiting the carrying of "dangerous weapon." D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Statute that prohibits possession of unregistered firearms is not limited to firearms that are operable; statute clearly includes within its scope inoperable weapons that may be redesigned, remade or readily converted or restored to operability. D.C. Code 1981, § 6-2311(a). *Townsend v. United States*, 559 A.2d 1319, 1989 D.C. App. LEXIS 114 (1989).

Defendant's conviction for carrying a pistol without a license would be sustained where all parts of a disassembled pistol were shown to have been conveniently accessible to defendant, such parts could be quickly and easily reassembled into operable gun, and defendant was observed to be holding object that reasonably appeared to be related to gun. D.C. Code § 22-3204. *Rouse v. United States*, 391 A.2d 790, 1978 D.C. App. LEXIS 303 (1978).

The statute prohibiting the possession "anywhere" with intent to use unlawfully against another an imitation pistol or other "dangerous weapon" embraces the possession of a real pistol and possession of a pistol may be charged under such statute. D.C. Code 1961, §§ 22-3204 and 22-3214(b). *U.S. v. Parker*, 185 A.2d 913, 1962 D.C. App. LEXIS 405 (Cr.App. 1962).

— Persons and occasions exempted or privileged, nature and elements of offenses.

Under statutory provision excepting from prohibition against carrying pistols "jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, or to members of the Army, Navy, or Marine Corps of United States or of the National Guard or Organized Reserves when on duty," corrections officer was not prohibited from carrying pistol whether or not "on duty." D.C. Code §§ 22-3204, 22-3205. *United States v. Pritchett*, 470 F.2d 455, 1972 U.S. App. LEXIS 6985 (C.A.D.C. 1972).

Despite fact that defendant was a special policeman at time of his arrest for carrying a pistol in violation of statute, he did not come within the "policemen or other duly appointed law-enforcement officers" exception to the statute, since a special policeman is not empowered to exercise his authority outside the property or area he is appointed to protect, or to carry weapons away from such area with certain exceptions, and since the factual circumstances in the instant case were not even close to being within those limited exceptions. D.C. Code §§ 4-115, 22-3204, 22-3205. *Franklin v. United States*, 458 F.2d 861, 1972 U.S. App. LEXIS 11014 (C.A.D.C. 1972).

Defendants traveling on subway with son to visit zoo and museums were not engaged in dealing firearms and, thus, were not exempt from carrying pistol without license statute. D.C. Code 1981, § 22-3204. *Bsharah v. United States*, 646 A.2d 993, 1994 D.C. App. LEXIS 143 (1994).

Special police officer, such as defendant, who had been commissioned pursuant to certain statute, will be considered policeman or law enforcement officer within meaning of statute providing that policemen or other duly appointed law enforcement officers do not need license to carry pistol, only to extent that he

acted in conformity with regulations governing special officers. D.C. Code §§ 4-115, 22-3204, 22-3205. *Timus v. United States*, 406 A.2d 1269, 1979 D.C. App. LEXIS 450 (1979).

At time of his arrest, defendant, a special police officer, was not on duty or in area of property to which he was assigned, at which there was no place for him to store his weapon or ammunition, and thus he would be permitted to carry his pistol without license only if he were traveling, without deviation, immediately after his period of active duty, between such area and his residence, but he was not doing so, where he was stopped and found with pistol two and one-half hours after end of his shift on Saturday when he would not encounter rush hour traffic. D.C. Code §§ 4-115, 22-3204, 22-3205. *Timus v. United States*, 406 A.2d 1269, 1979 D.C. App. LEXIS 450 (1979).

Defendant, who was a federal protective officer within the general services administration, was not, for purposes of statute prohibiting carrying a pistol without a license, within the exemption which applies to "policemen and other duly appointed law-enforcement officers," where there was no authorization for federal protective service officers to carry firearms other than while on duty or in a travel status to and from duty assignments, while defendant at the time of his arrest was returning from a personal trip to Baltimore totally unrelated to his duties as a federal protective service officer, though, as such officer, he had the same civil service classification as applied to members of the metropolitan police department. D.C. Code §§ 22-3204, 22-3205; 40 U.S.C. §§ 13n, 212a, 318 et seq. *Middleton v. United States*, 305 A.2d 259, 1973 D.C. App. LEXIS 300 (1973).

Special policemen are commissioned for special purpose of protecting property on premises of employer and do not have general duties and broad authority of a policeman or law enforcement officer in ordinary sense of those terms. D.C. Code §§ 4-115, 22-3204 to 22-3206. *Franklin v. United States*, 271 A.2d 784, 1970 D.C. App. LEXIS 377 (App. 1970), affirmed by 458 F.2d 861, 148 U.S. App. D.C. 39, 1972 U.S. App. LEXIS 11014 (1972).

Where defendant, although in uniform, was not due to report for duty as special policeman for six hours and was not traveling without deviation, immediately before or immediately after period of actual duty, between area where he worked and his residence, he was not "policeman" nor "law enforcement officer" within provision exempting policemen or law enforcement officers from statute proscribing carrying pistol either openly or concealed without a license. D.C. Code §§ 4-115, 22-3204 to 22-3206. *Franklin v. United States*, 271 A.2d 784, 1970 D.C. App. LEXIS 377 (App. 1970), affirmed by 458 F.2d 861, 148 U.S. App. D.C. 39, 1972 U.S. App. LEXIS 11014 (1972).

A defendant was neither a “policeman” nor a “law enforcement officer” so as to be exempt from the statute against carrying a pistol without a license, where defendant was a special policeman appointed by the Commissioners and he was not “on actual duty in the area” of the place where he was arrested nor was he “traveling without deviation immediately before and immediately after the period of actual duty between such places and his residence” within the Commissioner’s regulation authorizing the carrying of firearms by special policemen under such circumstances. D.C. Code 1951, §§ 4-115, 22-3204, 22-3205. *McKenzie v. U.S.*, 158 A.2d 912, 1960 D.C. App. LEXIS 181 (Cr.App. 1960).

Existing judicial precedent requires a possessory interest in a dwelling house before an individual charged with carrying a pistol or some other dangerous weapon is entitled to claim the benefits of the exception in this section. *United States v. Fortune*, 116 WLR 817 (Super. Ct. 1988).

— Possession of weapon, nature and elements of offenses.

The possession of a gun in one’s home is not a crime under statute in the District of Columbia. D.C. Code 1940, § 22-3204. *Morton v. U.S.*, 183 F.2d 844, 1950 U.S. App. LEXIS 3018 (C.A.D.C. 1950).

Conviction of defendant for carrying a dangerous weapon (CDW), as a result of carrying an ice pick in his pocket as a precaution in the event that victim, who had just assaulted defendant, resumed his assault when defendant left his home, did not represent a clear or obvious violation of defendant’s Second Amendment rights, as required for conviction to constitute plain error, as it was not clear that the right to keep and bear arms applied to an ice pick, it was not clear that the right to carry a weapon extended outside of the home, and it was not clear that the right to carry a weapon extended to concealed weapons. *Mack v. United States*, 6 A.3d 1224, 2010 D.C. App. LEXIS 612 (2010).

Elements of possession of a firearm during the commission of a crime of violence are (1) possession of a pistol, machine gun, shotgun, rifle, or other real or imitation firearm, and (2) commission of a crime of violence, as statutorily enumerated, while in possession of the firearm. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

— Statutory exceptions, nature and elements of offenses.

Exceptions to carrying pistol without license statute must be narrowly circumscribed, given clear intent of Congress. D.C. Code 1981, § 22-

3204. *Bsharah v. United States*, 646 A.2d 993, 1994 D.C. App. LEXIS 143 (1994).

Peremptory challenges.

Prosecutor’s explanation for striking jurors based on a concern about the jurors’ intelligence with respect to crime of carrying a pistol without a license was not pretext for race discrimination, as required to violate Batson; the concept of constructive possession was a more complex concept than in cases involving actual possession, and one excluded juror was employed by a corporation that employed developmentally disabled and mentally challenged individuals, and two other excluded jurors were both unemployed and recent high school graduates. *Smith v. United States*, 966 A.2d 367, 2009 D.C. App. LEXIS 35 (2009).

Persons liable, generally.

In order to convict defendant of aiding and abetting another in carrying a pistol without a license, some conduct by the defendant of an affirmative character in furtherance of the act of carrying the pistol by the principal must be established. D.C. Code 1981, § 22-3204(a). *Halicki v. United States*, 614 A.2d 499, 1992 D.C. App. LEXIS 229 (1992).

It was not necessary to find that defendant was not licensed to carry a pistol in order to convict her for aiding and abetting the carrying of a pistol without a license. D.C. Code 1981, § 22-3204(a). *Halicki v. United States*, 614 A.2d 499, 1992 D.C. App. LEXIS 229 (1992).

Defendant could not be held guilty as aider and abettor on weapons charges arising when companion, with whom defendant was walking down the street after exiting the vehicle about which officers sought to question them, placed handgun on ground near vehicle while defendant stood with his back to companion; defendant could not have acted as shield to block view of approaching officers from his position and could not have been acting as lookout, since both he and companion were already aware that officers were approaching; thus, defendant could not be held liable on theory that he assisted companion in possessing and disposing of gun. D.C. Code 1981, §§ 6-2311(a), 22-3204. *In re L.A.V.*, 578 A.2d 708, 1990 D.C. App. LEXIS 215 (1990).

Fact that codefendant had been convicted of carrying the same pistol did not preclude conviction of defendant of carrying the pistol without a license, since defendants could be found to have jointly possessed weapon, which was found under passenger’s side of front seat of automobile. D.C. Code § 22-3204. *Porter v. United States*, 282 A.2d 559, 1971 D.C. App. LEXIS 218 (1971).

Fact that passenger in vehicle driven by defendant was convicted of carrying pistol

without license, following police officer's discovery of pistol lying on seat of vehicle between passenger and driver, did not prevent conviction of driver for same offense. D.C. Code § 22-3204. *Waterstaat v. United States*, 252 A.2d 507, 1969 D.C. App. LEXIS 238 (App. 1969).

Pleas.

In prosecution for drug offenses and for carrying pistol without a license, refusal of Government, which permitted coindictes to enter pleas to less than all the counts charged, to allow accused to do likewise did not deny accused equal protection where there was strong indication that accused was major dealer in narcotics and that coindictes were only subordinates functioning under his direction. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; D.C. Code §§ 22-3204, 33-402(a); U.S. Const. Amend. 5. *United States v. Bell*, 506 F.2d 207, 1974 U.S. App. LEXIS 6271 (C.A.D.C. 1974).

Admission of evidence of Government witness' plea agreement on direct examination was not abuse of discretion, even if defendant had stipulated that he would not use agreement for impeachment purposes, in trial for murder; elicitation during direct examination of plea agreement containing promise to testify truthfully did not impermissibly bolster witness' credibility, plea agreement was relevant to witness' credibility, evidence served to extinguish jury speculation about why witness connected with crime was not charged, and jury was instructed to receive witness' testimony with caution and to scrutinize it with care. *Woods v. United States*, 987 A.2d 451, 2010 D.C. App. LEXIS 11 (2010).

Active role of court in trying to convince defendant that he should follow counsel's advice to enter plea of guilty to pistol charge is improper. (Per Mack, A. J., with three Judges concurring and three Judges concurring in part). D.C. Code §§ 22-505(a), 22-3204; D.C. Code SCR, Criminal Rule 11; U.S. Const. Amend. 6. *Butler v. United States*, 414 A.2d 844, 1980 D.C. App. LEXIS 288 (1980).

Where motions, files and records in proceedings on motion to vacate guilty plea and sentence, based on allegation that defendant had been deprived of effective assistance of counsel, failed effectively to rebut defendant's allegations of violation of Sixth Amendment, it was error to deny motion without affording hearing. D.C. Code §§ 22-3204, 23-110; 18 U.S.C. § 2255; U.S. Const. Amends. 4, 6. *Gibson v. United States*, 388 A.2d 1214, 1978 D.C. App. LEXIS 476 (1978).

As respects allegation of defendant, charged with armed robbery and carrying dangerous weapon, that his absence from status hearing, at which defense counsel was served with in-

formation revealing Government's intention to seek additional punishment under recidivist statute, deprived defendant of meaningful right to participate in plea bargaining, evidence established that counsel fully advised his client; furthermore, there was no absolute right to bargain. D.C. Code §§ 22-2901, 22-3202, 22-3202(a)(2), 22-3204, 23-111. *Smith v. United States*, 356 A.2d 650, 1976 D.C. App. LEXIS 533 (1976).

Police powers.

It is well within police power of District of Columbia to declare as contraband machine guns, sawed-off shotguns, blackjacks and switchblades without offending commerce clause. D.C. Code 1973, §§ 22-3204, 22-3214; D.C. Code 1978 Supp., § 6-1812(d, e); U.S. Const.Art. 1, § 8, cl. 3. *Smith v. District of Columbia*, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Post-conviction bail.

Appellant's motion for release on personal recognizance pending his appeal from conviction of carrying a dangerous weapon after conviction of a felony would be denied where paying deference to action of District Court, considered with appellant's record, including the conviction and his failure to comply with prior probation and release requirements, the Court of Appeals was of opinion that no one or more conditions of release would reasonably assure that appellant would not pose a danger to any other person or to community if released pending the appeal. 18 U.S.C. § 3148; D.C. Code § 22-3204. *United States v. Blyther*, 407 F.2d 1279, 1969 U.S. App. LEXIS 9314 (C.A.D.C. 1969), writ of certiorari denied by 394 U.S. 953, 89 S. Ct. 1296, 22 L. Ed. 2d 488, 1969 U.S. LEXIS 2139 (1969).

Presumptions and burden of proof.

— Actual or constructive possession, presumptions and burden of proof.

In a trial for carrying a pistol without a license based on constructive possession, the government's proof must go beyond the broader concept of constructive possession alone to show that the pistol was in such proximity to the person as to be convenient of access and within reach. *Smith v. United States*, 899 A.2d 119, 2006 D.C. App. LEXIS 217 (2006).

To establish constructive possession, the government had to prove beyond a reasonable doubt that defendant (1) knew of the handgun's presence and had both (2) the ability and (3) the intent to exercise dominion and control over it. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

To establish constructive possession of pistol or ammunition, government must prove defendant had knowledge of presence of contraband

items and existence of dominion and control over them. D.C. Code 1981, § 22-3204(a). *McGriff v. United States*, 705 A.2d 282, 1997 D.C. App. LEXIS 278 (1997), writ of certiorari denied by 523 U.S. 1086, 118 S. Ct. 1542, 140 L. Ed. 2d 690, 1998 U.S. LEXIS 2729, 66 U.S.L.W. 3688 (1998).

To support conviction based on firearm and ammunition offenses, government was required to prove defendant had actual or constructive possession of firearms, and where defendant was not found in actual possession of firearms, government had to prove that defendant had constructive possession of firearms. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204(a, b). *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

To support conviction for carrying pistol without license, government must demonstrate that defendant had either actual or constructive possession of unlicensed pistol; for this purpose, there is no significant legal distinction between possession and custody. D.C. Code 1981, § 22-3204. *Campos v. United States*, 617 A.2d 185, 1992 D.C. App. LEXIS 288 (1992).

To establish constructive possession in prosecution for carrying pistol without license, government must demonstrate, either through direct or circumstantial evidence, defendant's knowledge of pistol's presence. D.C. Code 1981, § 22-3204. *Campos v. United States*, 617 A.2d 185, 1992 D.C. App. LEXIS 288 (1992).

To prove constructive possession of pistol, evidence must be adduced establishing that pistol was conveniently accessible to defendant and that he knew of its presence. D.C. Code 1981, § 22-3204. *Brown v. United States*, 546 A.2d 390, 1988 D.C. App. LEXIS 135 (1988).

Direct personal possession of prohibited weapon is not required for occupant of automobile to be convicted of violation of statute prohibiting carrying pistol without a license. D.C.C.E § 22-3204. *Kenhan v. United States*, 263 A.2d 253, 1970 D.C. App. LEXIS 240 (App. 1970).

— Carriage in dwelling, business place or property, presumptions and burden of proof.

In prosecution for carrying a dangerous weapon, burden is on defendant to produce some evidence to bring himself within exception for carrying a weapon on land possessed by him. D.C. Code 1981, § 22-3204. *Fortune v. United States*, 570 A.2d 809, 1990 D.C. App. LEXIS 42 (1990).

A defendant who seeks to come within the "dwelling house" exception to the statutory prohibition against carrying a pistol without a license must establish exclusive possession and control of the premises in which the pistol is kept. D.C. Code 1973, § 22-3204. *Gaulmon v.*

United States, 465 A.2d 847, 1983 D.C. App. LEXIS 452 (1983).

Defendant charged with carrying pistol without a license had burden of bringing himself within exception provided for person who carries weapon in his dwelling house or on other land possessed by him. D.C. Code § 22-3204. *Hines v. United States*, 326 A.2d 247, 1974 D.C. App. LEXIS 288 (1974).

For defendant charged with carrying pistol without a license to bring himself within exception provided for person carrying weapon in his own dwelling or on other land possessed by him, defendant was required to show that he had exclusive control and possession of the premises. D.C. Code § 22-3204. *Hines v. United States*, 326 A.2d 247, 1974 D.C. App. LEXIS 288 (1974).

In prosecution for carrying a pistol without a license, defendant had burden of bringing himself within exception to statute providing that no person shall carry a pistol without a license except in his dwelling house or place of business or on other land possessed by him. D.C. Code § 22-3204. *White v. United States*, 283 A.2d 21, 1971 D.C. App. LEXIS 224 (1971).

Under statute prohibiting carrying pistol without license except in dwelling or place of business burden was on prosecution not only to prove that defendant was carrying weapon but to allege and prove affirmatively that he did not have a license. D.C. Code 1940, § 23-3204. *Bussie v. U.S.*, 81 A.2d 247, 1951 D.C. App. LEXIS 167 (Cr.App. 1951).

Under the statute prohibiting the carrying of a pistol without a license except in a dwelling house or place of business, burden was on prosecution not only to prove that defendant as a rider was carrying pistol in taxicab, but to allege and prove affirmatively that defendant did not have a license. D.C. Code 1940, § 22-3204. *Brown v. U.S.*, 66 A.2d 491, 1949 D.C. App. LEXIS 200 (Cr.App. 1949).

— Carrying and concealing, presumptions and burden of proof.

In prosecution for carrying a pistol without a license, prosecution had no burden of proving that defendant either owned the pistol, customarily carried it, or was intending to use it. D.C. Code § 22-3204. *United v. Freeman*, 462 F.2d 290, 1972 U.S. App. LEXIS 10618 (C.A.D.C. 1972).

In order to convict a defendant of carrying a pistol without a license, the government need only prove that the defendant either actually or constructively possessed the pistol in order to prove that he or she "carried" it as the term was used in the statute. D.C. Code 1981, § 22-3204. *Butler v. United States*, 614 A.2d 875, 1992 D.C. App. LEXIS 188 (1992), writ of certiorari denied by 506 U.S. 1009, 113 S. Ct. 625, 121 L.

Ed. 2d 558, 1992 U.S. LEXIS 7611, 61 U.S.L.W. 3401 (1992).

To support conviction for carrying dangerous weapon, Government must show that defendant carried in open or concealed manner a dangerous weapon, intended to do acts constituting carrying the weapon, and intended to use object as dangerous weapon. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

— In general.

To impose the higher penalty for offense of carrying a dangerous or deadly weapon, the government must prove that the defendant carried the object outside his home or business. *Wright v. United States*, 926 A.2d 1151, 2007 D.C. App. LEXIS 393 (2007).

To prevail on charge of carrying a dangerous or deadly weapon, the government must prove (1) that the defendant carried a “deadly or dangerous weapon” either openly or concealed on his person, and (2) that the weapon is capable of being concealed; in cases involving a pistol, the government must also prove that the defendant carried the pistol without a license. *Wright v. United States*, 926 A.2d 1151, 2007 D.C. App. LEXIS 393 (2007).

Government is not required, in prosecution for carrying dangerous weapon in which the item in question is a knife, to prove specific intent to use knife for an unlawful purpose; rather, because a knife may be lawfully used as a tool or for other utilitarian purpose, the test is whether the purpose of carrying the object, under the circumstances, is its use as a weapon. *Reed v. United States*, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

That purpose of carrying knife was to use it as a dangerous weapon may be established, in prosecution for carrying a dangerous weapon, by proof of the surrounding circumstances, such as the time and place the defendant was found in possession of the knife. *Reed v. United States*, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

To prove the charge of assault with a dangerous weapon, the government must prove beyond a reasonable doubt that the accused: (1) attempted with force and violence to injure another; (2) at the time had the apparent present ability to injure the victim; (3) intended to perform the acts constituting the assault; and (4) committed the assault with a dangerous weapon. *Price v. United States*, 813 A.2d 169, 2002 D.C. App. LEXIS 723 (2002).

In order to convict for carrying a dangerous weapon, where the instrument in question is a knife, the government must prove beyond a reasonable doubt that (1) the defendant carried the knife either openly or concealed; (2) the defendant had the intent to do the acts constituting the carrying of the weapon; and (3) the

purpose of carrying the instrument was its use as a dangerous weapon. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

To support conviction for carrying pistol without license, government need not prove that defendant intended to use unlicensed pistol for unlawful purpose. D.C. Code 1981, § 22-3204. *Campos v. United States*, 617 A.2d 185, 1992 D.C. App. LEXIS 288 (1992).

In order to show a violation of statute providing that no person shall carry either openly or concealed on or about his person a pistol, without a license therefor, or any deadly or dangerous weapon capable of being so concealed, the government must prove beyond a reasonable doubt that the defendant carried either openly or in a concealed manner any deadly or dangerous weapon, that he had the intent to do the acts constituting carrying such a dangerous weapon, and that the defendant's purpose in carrying the instrument was its use as a dangerous weapon; the government is not required to show a defendant's specific intent to use the instrument unlawfully. D.C. Code 1981, § 22-3204. *In re S.P.*, 465 A.2d 823, 1983 D.C. App. LEXIS 453 (1983).

If instrument found on defendant after arrest was not used in crime and is not per se dangerous weapon, Government must show something in addition to fact that it was found on defendant to meet tests laid down for various dangerous weapons statutes. D.C. Code §§ 22-502, 22-3204, 22-3214. *Cooper v. United States*, 368 A.2d 554, 1977 D.C. App. LEXIS 403 (1977).

When defendant is charged with carrying a pistol without a license, government must prove that the weapon was operable. D.C. Code § 22-3204. *Anderson v. United States*, 326 A.2d 807, 1974 D.C. App. LEXIS 294 (1974), writ of certiorari denied by 420 U.S. 978, 95 S. Ct. 1405, 43 L. Ed. 2d 659, 1975 U.S. LEXIS 966 (1975).

All that is needed to prove violation of statute prohibiting carrying pistol without license is intent to do the proscribed act. D.C. Code § 22-3204. *Mitchell v. United States*, 302 A.2d 216, 1973 D.C. App. LEXIS 251 (1973).

In prosecution for carrying a pistol without a license, defendant had burden of bringing himself within statutory exception to offense charged, and government did not have burden of showing, as an element of its proof, that defendant did not come within exception. D.C. Code §§ 22-3204 to 22-3206. *Williams v. United States*, 237 A.2d 539, 1968 D.C. App. LEXIS 122 (App. 1968).

— Justification or excuse, presumptions and burden of proof.

In order to assert defense of innocent possession to charge of carrying pistol without a license, defendant must show not only absence of criminal purpose but also that his possession

was excused and justified as stemming from affirmative effort to aid and enhance social policy underlying law enforcement. D.C. Code 1981, § 22-3204. *Bieder v. United States*, 707 A.2d 781, 1998 D.C. App. LEXIS 38 (1998).

In order to assert justified or momentary possession as a defense to charge of carrying a pistol without a license, an accused must show not only that the possession was either extremely brief or was excused and justified as stemming from an affirmative effort to aid and enhance social policy underlying law enforcement but also that there was an absence of criminal purpose. D.C. Code § 22-3204. *Blango v. United States*, 335 A.2d 230, 1975 D.C. App. LEXIS 350 (1975).

In order to assert defense of innocent or momentary possession of pistol as defense to charge of carrying pistol without a license, accused must show not only an absence of criminal purpose, but also that his possession was excused and justified as stemming from an affirmative effort to aid and enhance social policy underlying law enforcement. D.C. Code §§ 22-3204, 22-3205. *Hines v. United States*, 326 A.2d 247, 1974 D.C. App. LEXIS 288 (1974).

— Knowledge and control of weapon, presumptions and burden of proof.

In regard to possessory weapons offenses, dominion or control over the weapon is shown when the accused has some appreciable ability to guide its destiny. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Knowledge of gun's presence may be inferred from surrounding circumstances; Government need not offer direct evidence of defendants' knowledge. D.C. Code 1981, §§ 6-2311, 22-3204. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

In prosecution for carrying a pistol without a license, it is not necessary that Government offer direct proof of knowledge of presence of the pistol. D.C. Code § 22-3204. *Johnson v. United States*, 309 A.2d 497, 1973 D.C. App. LEXIS 354 (1973), writ of certiorari denied by 416 U.S. 951, 94 S. Ct. 1960, 40 L. Ed. 2d 301, 1974 U.S. LEXIS 647 (1974).

In prosecution for carrying a pistol without a license, Government must prove that the pistol was conveniently accessible to defendant, and that he knew of its presence. D.C. Code § 22-3204. *Johnson v. United States*, 309 A.2d 497, 1973 D.C. App. LEXIS 354 (1973), writ of certiorari denied by 416 U.S. 951, 94 S. Ct. 1960, 40 L. Ed. 2d 301, 1974 U.S. LEXIS 647 (1974).

Knowledge of presence of pistol could be reasonably inferred, in prosecution for carrying pistol without a license, from fact that one or two inches of butt of pistol were sticking out from between backrest and seat to left of where

defendant had been sitting in automobile. D.C. Code § 22-3204. *Kenhan v. United States*, 263 A.2d 253, 1970 D.C. App. LEXIS 240 (App. 1970).

— Lack of licensure, presumptions and burden of proof.

There was no manifest miscarriage of justice in defendant's convictions under District of Columbia law based on proof that defendant was not licensed to carry arms and that two pistols recovered in his estranged wife's apartment were not registered in his name, even though defendant alleged evidence was insufficient in that record search was fatally flawed because he did not reside at his estranged wife's address and that record search had been limited to registrations and licenses in defendant's name at that address, where there was no claim that search using defendant's correct address would have uncovered any exculpatory license or registration record and where defendant's prior convictions would have made it unlawful for him to own, possess, or register pistol. D.C. Code 1981, §§ 6-2311(a), 6-2312(a)(2), 6-2361, 22-3202, 22-3204. *United States v. Jackson*, 824 F.2d 21, 1987 U.S. App. LEXIS 9570 (C.A.D.C. 1987), writ of certiorari denied by 484 U.S. 1013, 108 S. Ct. 715, 98 L. Ed. 2d 665, 1988 U.S. LEXIS 12, 56 U.S.L.W. 3460 (1988).

To support conviction for carrying a pistol without a license (CPWL) on an aiding and abetting theory of liability, there must be a showing of some conduct by an alleged accomplice of an affirmative character in furtherance of act of carrying pistols by principals. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

On charge of carrying pistol without license, government may prove lack of license to carry weapon by oral testimony of someone who has searched entire group of entries and is prepared to report that it does not contain specific entry. D.C. Code 1973, § 22-3204. *Hilton v. United States*, 435 A.2d 383, 1981 D.C. App. LEXIS 358 (1981).

For conviction for carrying unlicensed pistol in District of Columbia in violation of statute, it was necessary only to show that defendant intended to carry pistol and that pistol was carried unlicensed in the district; it was not

necessary to show specific intent to carry unlicensed pistol. D.C. Code § 22-3204. *Brown v. United States*, 379 A.2d 708, 1977 D.C. App. LEXIS 259 (1977).

In prosecution for carrying gun without license, prosecution was required only to prove that accused carried gun and had no license to carry it, and was not required to prove all contents of original record of all licenses for carrying guns issued by superintendent of police. D.C. Code 1940, § 23-3204. *Bussie v. U.S.*, 81 A.2d 247, 1951 D.C. App. LEXIS 167 (Cr.App. 1951).

In prosecution for carrying gun without license, government could prove that no license to carry gun had ever been issued to defendant by oral testimony of lieutenant of police department who had searched entire group of entries and was prepared to report that it did not contain entry favorable to defendant. D.C. Code 1940, § 23-3204. *Bussie v. U.S.*, 81 A.2d 247, 1951 D.C. App. LEXIS 167 (Cr.App. 1951).

— Recidivists, presumptions and burden of proof.

In order to prosecute a felony under the "felony-repeater" clause of statute pertaining to possession of pistol, government must not only prove that defendant was a felon who possessed or controlled a gun, but, in addition, that the felon had an unlicensed pistol on his person while not in his dwelling or on land owned by him. D.C. Code §§ 22-3203(2), 22-3204. *Palmore v. United States*, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

If a person has not previously been convicted of a violation of this section or of a felony, the violation is subject to the misdemeanor penalties of § 22-3215. On the other hand, if a person has a prior conviction for a violation of this section or has a felony conviction, the person is subject to the imposition of a felony sentence pursuant to paragraph (a)(2) of this section. *United States v. Bigelow*, 123 WLR 401 (Super. Ct. 1995).

— Statutory exceptions, presumptions and burden of proof.

Under § 22-3205, the exception to carrying pistol without license charge, burden is upon defendant to prove that he qualified for exception. D.C. Code 1981, §§ 22-3204, 22-3205. *Chapman v. United States*, 493 A.2d 1026, 1985 D.C. App. LEXIS 402 (1985).

Purposes and legislative intent.

Statute on carrying pistol without a license (CPWL) was intended to prevent a person from having a pistol or dangerous weapon so near him or her that he or she could promptly use it, if prompted to do so by any violent motive. D.C. Code 1981, § 22-3204(a). *White v. United*

States, 714 A.2d 115, 1998 D.C. App. LEXIS 113 (1998).

The offense of carrying a dangerous weapon is essentially a crime of possession, designed to keep such dangerous items off the street. D.C. Code 1981, § 22-3204. *Roper v. United States*, 564 A.2d 726, 1989 D.C. App. LEXIS 188 (1989).

Purpose of statute prohibiting carrying of a pistol without license is to drastically tighten ban on carrying dangerous weapons. D.C. Code § 22-3204. *Logan v. United States*, 402 A.2d 822, 1979 D.C. App. LEXIS 384 (1979).

Congress intended to preclude a nonlicensee from being on the streets with his weapon because of the danger he poses to the community as a result of the inherent dangerousness of the weapon he carries and of the absence of any evidence of his capability to carry safely such a dangerous instrumentality. D.C. Code § 22-3204. *United States v. Walker*, 380 A.2d 1388, 1977 D.C. App. LEXIS 302 (1977).

Purpose of statutory proscription against carrying a pistol outside one's residence or place of business without a license is to forestall temptation to use pistol and to thereby do harm to public. D.C. Code § 22-3204. *United States v. Walker*, 380 A.2d 1388, 1977 D.C. App. LEXIS 302 (1977).

Congress, in passing statute prohibiting any person from carrying deadly weapon without license, except in his dwelling house or place of business or on other land possessed by him, intended drastically to limit possession of guns in District of Columbia and, in doing so, it could not be assumed that it intended, in jurisdiction where there were countless numbers of employees reporting every day to governmental agencies, to write in exception permitting every employee to carry loaded pistol while working. D.C. Code § 22-3204. *Berkley v. United States*, 370 A.2d 1331, 1977 D.C. App. LEXIS 429 (1977).

The statute making it a crime for a person to carry "elsewhere" than in his home "or place of business or on land possessed by him a pistol without a license. . . or any deadly or dangerous weapon capable of being so concealed," and the statute prohibiting possession "anywhere" with intent to use unlawfully against another an imitation pistol reflect the purpose of Congress to strengthen the existing law and tighten controls over the possession of dangerous weapons and each has distinctive objects of correction. D.C. Code 1961, §§ 22-3204 and 22-3214(b). *U.S. v. Parker*, 185 A.2d 913, 1962 D.C. App. LEXIS 405 (Cr.App. 1962).

Questions of law and fact.

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a

dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. D.C. Code §§ 22-501, 22-502, 22-3202, 22-3204. *United States v. Benn*, 476 F.2d 1127, 1972 U.S. App. LEXIS 6483 (C.A.D.C. 1972).

Evidence in prosecution for assault with dangerous weapon and carrying a dangerous weapon after conviction of felony did not warrant grant of motion for acquittal on theory of self defense. D.C. Code §§ 22-502, 22-3204. *United States v. James*, 452 F.2d 1375, 1971 U.S. App. LEXIS 7018 (C.A.D.C. 1971).

In prosecution for robbery and carrying a dangerous weapon wherein government's testimony on issue of insanity was offered by a number of lay witnesses and a qualified psychiatrist, and on part of defendant there was opposing testimony both lay and psychiatric, issue of insanity was for jury. D.C. Code 1951, §§ 22-2901, 22-3204. *Niport v. U.S.*, 263 F.2d 901, 1959 U.S. App. LEXIS 4439 (C.A.D.C. 1959).

If prosecution for violation of statute defining the offense a person commits in carrying a pistol without license except in his dwelling house or place of business or on other land possessed by him, jury question was presented as to whether place at which defendant was carrying weapon was his place of business. D.C. Code 1951, § 22-3204. *Alexander v. U.S.*, 210 F.2d 727, 1954 U.S. App. LEXIS 2487 (C.A.D.C. 1954).

In prosecution for violation of statute forbidding carrying of pistol on or about one's person without a license, question whether, in having loaded pistol under hinged front seat of automobile so that he could get it by alighting from automobile and tilting driver's seat upward and forward, defendant had the weapon in such proximity to his person as to be convenient of access and within reach was one for jury. D.C. Code 1940, § 22-3204. *Wilson v. U.S.*, 198 F.2d 299, 1952 U.S. App. LEXIS 3178 (C.A.D.C. 1952).

Jury question as to whether defendants constructively possessed drugs and weapons found in vehicle which was owned by one defendant and to which other defendant had keys was presented by evidence that police stopped car owner and key holder near to each other and to the vehicle containing the contraband, that distinct smell of narcotics was emanating from vehicle, that both defendants were able to exercise dominion and control over the contents of the vehicle, and that defendants made incriminating statements indicating consciousness of guilt. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3202, 22-3204(b), 33-541(a), (a)(1). *Speight v. United States*, 671 A.2d 442, 1996 D.C. App. LEXIS 11 (1996), writ of certiorari denied by

519 U.S. 956, 117 S. Ct. 375, 136 L. Ed. 2d 264, 1996 U.S. LEXIS 6550, 65 U.S.L.W. 3309 (1996).

In prosecution under indictment charging defendant with possession of firearm while committing both armed first-degree burglary and assault with a dangerous weapon, when there was a failure of proof as to first means, trial court properly granted motion for judgment of acquittal as to that portion of that count go to the jury, since there was sufficient basis for finding possession of firearm while committing crime of violence based on assault with a dangerous weapon. D.C. Code 1981, § 22-3204(a). *Farmer v. United States*, 616 A.2d 1241, 1992 D.C. App. LEXIS 295 (1992), writ of certiorari denied by 507 U.S. 1056, 113 S. Ct. 1958, 123 L. Ed. 2d 661, 1993 U.S. LEXIS 3098, 61 U.S.L.W. 3731 (1993).

Evidence supported submission to jury of case in which defendants were charged with armed kidnapping, armed rape, armed robbery and carrying pistol without a license. D.C.C.E §§ 22-2101, 22-2801, 22-2901, 22-3202, 22-3204. *Smith v. United States*, 389 A.2d 1356, 1978 D.C. App. LEXIS 399 (1978), writ of certiorari denied by 439 U.S. 1048, 99 S. Ct. 726, 58 L. Ed. 2d 707, 1978 U.S. LEXIS 4242 (1978).

Evidence in prosecution which resulted in conviction for carrying a pistol without a license and possession of marijuana was sufficient for jury. D.C. Code §§ 22-3204, 33-402. *Perry v. United States*, 364 A.2d 617, 1976 D.C. App. LEXIS 365 (1976).

Whether front seat passenger had knowledge of presence of unlicensed gun in rear seat was question for trier, in prosecution for possession of unlicensed pistol. D.C. Code § 22-3204; 18 U.S.C. § 5005 et seq. *Holley v. United State*, 286 A.2d 222, 1972 D.C. App. LEXIS 329 (1972).

Evidence that defendant was a considerable distance from his home, in public eating establishment, standing in front of cash register during evening hour with a kitchen knife openly displayed in his belt was sufficient to present jury question as to whether knife was a deadly or dangerous weapon, in prosecution for carrying either openly or concealed on person any deadly or dangerous weapon capable of being concealed. D.C. Code § 22-3204. *Nelson v. United States*, 280 A.2d 531, 1971 D.C. App. LEXIS 191 (1971).

Evidence that police officers saw defendant drop an object later found to be a .22 caliber sawed-off rifle from his automobile posed question for jury as to defendant's guilt or innocence of carrying dangerous weapon. D.C. Code § 22-3204. *Watson v. United States*, 262 A.2d 121, 1970 D.C. App. LEXIS 220 (App. 1970).

Whether pistol had been lying on front seat of automobile next to defendant driver within convenient access and reach of defendant so that he might have been found to have had possession under statute, or whether pistol fell out of pocket of passenger and police intervened before defendant could have had access to it, was jury question in prosecution for carrying pistol without license. D.C. Code § 22-3204. *Waterstaat v. United States*, 252 A.2d 507, 1969 D.C. App. LEXIS 238 (App. 1969).

Question of identification was one of fact for jury in prosecution for assault and for carrying a deadly weapon. D.C. Code §§ 22-504, 22-3204. *Durham v. United States*, 237 A.2d 830, 1968 D.C. App. LEXIS 127 (App. 1968).

In prosecution for carrying gun without license, whether defendant had license was a question for the jury. D.C. Code 1940, § 23-3204. *Bussie v. U.S.*, 81 A.2d 247, 1951 D.C. App. LEXIS 167 (Cr.App. 1951).

This section prohibits the knowing carrying and knowing possession of a pistol in any part of an automobile, and that, in the former instance, the issue of accessibility should be left to the jury, whether or not the pistol is within the immediate physical reach of the accused. *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987).

Review.

— Determination and disposition, review.

Where there was serious question as to whether defendant had requisite access to weapons to violate statute concerning possession of unlicensed weapon and where convictions on weapons charges were superfluous in light of concurrent sentences on drug possession conviction which was upheld, the weapons convictions would be vacated rather than allowing drain on judicial resources that would result from resolving issue of access. D.C. Code § 22-3204. *United States v. Durant*, 648 F.2d 747, 1981 U.S. App. LEXIS 14481 (C.A.D.C. 1981).

Failure of officer, who stated, in affidavit in opposition to bail motion filed after accused was convicted of federal narcotics offenses and carrying pistol without license, that officer had been informed that accused owned property in Bimini and that officer had received from accused a post card bearing a Bimini postmark, to mention post card incident to prosecutor until after verdict was returned did not sufficiently undermine officer's credibility so as to warrant new trial, notwithstanding contention that officer's recital of such incident was a falsehood and an omen of bias. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; D.C. Code §§ 22-3204, 33-402(a). *United States v.*

Bell, 506 F.2d 207, 1974 U.S. App. LEXIS 6271 (C.A.D.C. 1974).

Where case against defendant on charges of carrying dangerous weapon was sufficiently proved by other independent evidence, fact that defendant's conviction in same trial on charges of first-degree murder was reversed because of error in trial court in admitting testimony by victim's wife that victim was afraid of being killed by defendant did not require reversal of conviction on weapons charge. D.C. Code § 22-3204. *United States v. Brown*, 490 F.2d 758, 1973 U.S. App. LEXIS 6261 (C.A.D.C. 1973).

Where defendant had been convicted of assault with intent to kill armed with dangerous weapon, with sentence of from three to nine years, for assault with dangerous weapon, with concurrent two to six-year sentence, and carrying pistol without license, with concurrent one-year sentence, two to six-year sentence would be vacated on appeal, without remand. D.C. Code §§ 22-502, 22-3204. *United States v. Wimbush*, 475 F.2d 347, 1973 U.S. App. LEXIS 12222 (C.A.D.C. 1973).

Conviction of juvenile of first-degree felony-murder, armed robbery, assault with dangerous weapon, assault upon police officer with dangerous weapon and carrying dangerous weapon would be remanded to district court to consider possibility of sentencing under Youth Corrections Act. D.C. Code §§ 22-502, 22-505(b), 22-2401, 22-3202, 22-3204; 18 U.S.C. § 5005 et seq. *United States v. Howard*, 449 F.2d 1086, 1971 U.S. App. LEXIS 9212 (C.A.D.C. 1971).

Sentence of from three to nine years on conviction of carrying a pistol without a license in violation of District of Columbia law was required to be vacated and case remanded for resentencing where record was barren of any presentence notice to defendant or proof to court of existence of statutory preconditions of imposition of greater than one-year sentence, to wit, prior conviction of similar offense or of another felony. D.C. Code § 22-3204. *United States v. Lucas*, 441 F.2d 1056, 1971 U.S. App. LEXIS 11499 (C.A.D.C. 1971).

Where general sentence imposed following convictions for robbery, assault with a dangerous weapon, and carrying concealed weapon was in excess of statutory maximum for carrying concealed weapon, and convictions for robbery and assault with dangerous weapon were required to be reversed because of absence of indication that defendant made informed decision, after appropriate advice, to proceed with joint counsel, case would be remanded for resentencing on count of carrying concealed weapon. D.C. Code 1961, § 22-3204. *Ford v. United States*, 379 F.2d 123, 1967 U.S. App. LEXIS 6454 (C.A.D.C. 1967).

Where defendant had been convicted of carrying a dangerous weapon and for housebreaking and larceny, and sentence for first offense

was not to take effect under judgment until expiration of sentences on other offenses, but judgment of conviction on other offenses was reversed on appeal, appropriate procedure would be to vacate judgment of conviction on first offense and remand case for entry of judgment thereon with direction for new trial as to other offenses. D.C. Code 1951, § 22-3204. *Payton v. U.S.*, 222 F.2d 794, 1955 U.S. App. LEXIS 3878 (C.A.D.C. 1955).

Where, prior to trial, court granted accused's motion that he be examined by three psychiatrists, one of whom was of his own choosing, and all three concluded that he was of sound mind, and no claim was made during trial that accused had been of unsound mind at time of offense, trial court did not abuse its discretion in declining to hear testimony of psychiatrist, offered on motion for new trial, that accused had been of unsound mind at time of offense. D.C. Code 1940, §§ 22-2901, 22-3202, 22-3204. *Wagstaff v. U.S.*, 198 F.2d 955, 1952 U.S. App. LEXIS 3264 (C.A.D.C. 1952).

On motion for new trial of prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, trial court had discretion not to require production of arrest record of a witness for prosecution which defendant claimed existed where such alleged record had not been properly subpoenaed during trial. D.C. Code 1940, §§ 22-2901, 22-3204; 18 U.S.C. § 371. *Bundy v. U.S.*, 193 F.2d 694, 1951 U.S. App. LEXIS 2938 (C.A.D.C. 1951).

Defendant was not entitled to new trial on domestic violence charges on basis of "newly discovered evidence" consisting of victim's disclosure, at time of sentencing, that she had contemplated suicide and that she dreamed about being beaten by defendant, as evidence was unlikely to produce acquittal. D.C. Code 1981, §§ 22-504, 22-3204(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

Where jury returned general verdict of guilty on charge of carrying pistol without a license (CPWL), the conviction could be affirmed if the evidence was sufficient to support either of the two alternative theories of "carrying" submitted to jury. D.C. Code 1981, § 22-3204(a). *White v. United States*, 714 A.2d 115, 1998 D.C. App. LEXIS 113 (1998).

Following determination on prior appeal that convictions for carrying a dangerous weapon-rifle and carrying a dangerous weapon-knife merged for sentencing purposes, the redesignation of count of indictment by the trial judge from carrying dangerous weapon-rifle to carrying a dangerous weapon-rifle and knife exceeded the trial judge's authority in light of separation of powers doctrine, and was not

conferred upon him by the remand in which the trial court was instructed to "vacate one of the two convictions and resentence on the other." U.S. Const. Amend. 5. *Bean v. United States*, 606 A.2d 770, 1992 D.C. App. LEXIS 100 (1992).

Newly discovered evidence that coperpetrators told victim "You got our shit!" would not have caused acquittal in case in which Government's principal witness testified that someone said "Where is the shit?" in prosecution for first-degree felony-murder, attempted robbery while armed, and carrying of pistol without license; affiant's statement did not support claim of right defense and did not taint reliability on witness' testimony. D.C. Code 1981, §§ 22-2401, 22-2902, 22-3202, 22-3204. *Townsend v. United States*, 549 A.2d 724, 1988 D.C. App. LEXIS 196 (1988), writ of certiorari denied by 490 U.S. 1102, 109 S. Ct. 2457, 104 L. Ed. 2d 1011, 1989 U.S. LEXIS 2732, 57 U.S.L.W. 3792 (1989).

Vacation of convictions for possessing pistol and ammunition without valid registration as they pertained to service revolver of defendant who was special police officer, on basis of defendant's absolute defense to possession of that unregistered firearm and ammunition, was necessary since there conceivably could be collateral consequences flowing from such convictions, even though convictions would remain with respect to second pistol. D.C. Code 1981, §§ 6-2311(a), (b)(1), 22-3204. *Chapman v. United States*, 493 A.2d 1026, 1985 D.C. App. LEXIS 402 (1985).

In prosecution for carrying a dangerous weapon and possession of a prohibited weapon, record was insufficient to determine whether any impeachable convictions of government witnesses existed, or whether they fell within ambit of Lewis, and thus on remand for resentencing, trial court had to conduct the appropriate Lewis inquiry. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

In proceeding in which defendant was convicted of possession of dangerous weapon and four counts of first-degree murder and in which government witness testified that she was with defendant, two victims and another on night of killing and that there had been argument between defendant and a victim that night, prosecutor's failure, pursuant to request for "all Brady material," to turn over such witness' statement that she did not remember seeing such victim the night he was killed did not necessitate new trial, in view of overwhelming evidence of guilt and fact that the omitted evidence created no reasonable doubt as to guilt. D.C. Code §§ 22-2401, 22-3204. *Strickland v. United States*, 389 A.2d 1325, 1978 D.C. App. LEXIS 478 (1978), writ of certiorari de-

nied by 440 U.S. 926, 99 S. Ct. 1258, 59 L. Ed. 2d 481, 1979 U.S. LEXIS 927 (1979).

Where, even according to defendant's testimony at trial, there was no valid issue as to whether police officer had constitutional right to seize gun and arrest defendant for possessing pistol without a license, it was unnecessary to remand for hearing to determine whether defense counsel's failure to assert at trial defendant's right to have been present at suppression hearing was a deliberate choice in which case the right was forfeited, or was an oversight, in which case failure to cure defect in suppression hearing was rendered harmless to defendant in view of his testimony establishing valid arrest and seizure. D.C. Code § 22-3204; D.C. Code SCR, Criminal Rule 43; U.S. Const. Amend. 4. *Poteat v. United States*, 330 A.2d 229, 1974 D.C. App. LEXIS 326 (1974).

Where enhanced penalty provisions for conviction of carrying a dangerous weapon were not properly invoked, sentence imposed must be vacated and case remanded for resentencing. D.C. Code § 22-3204. *Savage v. United States*, 313 A.2d 880, 1974 D.C. App. LEXIS 346 (1974).

Where names of alleged alibi witnesses were known on day of trial and alibi testimony of witnesses, in light of complainant's positive identification of his assailant, would not have produced defendant's acquittal, refusal of defendant's motion for new trial on basis of newly discovered evidence consisting of alibi witnesses was not an abuse of discretion. D.C. Code SCR, Criminal Rule 33; D.C. Code §§ 22-502, 22-3204. *Williams v. United States*, 295 A.2d 503, 1972 D.C. App. LEXIS 266 (1972).

In prosecution, without jury, for carrying a pistol without a license and for possessing a sawed-off shotgun, where record of what occurred in open court was silent as to any waiver of defendant's right to a jury trial, case would be remanded for a determination, after hearing, of whether defendant knowingly and voluntarily waived his right to jury trial in open court and requested a trial by the court, even though informations had been stamped with notation "Jury Trial Demand Withdrawn". D.C. Code §§ 16-705(a), 22-3204, 22-3214(a). *Jackson v. United States*, 262 A.2d 106, 1970 D.C. App. LEXIS 216 (App. 1970).

Where issue of whether defendant, who was convicted of carrying a dangerous weapon came within exception of statute on ground that he was at least a "possessor" of the apartment building where assault occurred was not fully litigated at trial, government would be given option of a retrial to show if it could that defendant did not come within the exception. D.C. Code § 22-3204. *Roumel v. United States*, 261 A.2d 240, 1970 D.C. App. LEXIS 203 (App. 1970).

— In general.

Fact that defendant, convicted of carrying

dangerous weapon without license in violation of District of Columbia code, had served sentence did not render appeal from conviction dismissable as moot, as statute under which he was indicted provided for consequence of conviction which did not disappear with expiration of sentence. D.C. Code § 22-3204. *Macklin v. United States*, 410 F.2d 1046, 1969 U.S. App. LEXIS 13128 (C.A.D.C. 1969).

Where trial Court's decision arresting judgment convicting defendant of carrying a pistol for insufficiency of indictment was based upon its construction of statute defining the offense as requiring allegation of nonpossession of a license, government should have appealed case directly to United States Supreme Court, and Court of Appeals for District of Columbia would certify case to Supreme Court 18 U.S.C. § 3731; D.C. Code 1940, § 22-3204; Federal Rules of Criminal Procedure, rules 29(a), 34, 18 U.S.C. *U.S. v. Waters*, 175 F.2d 340, 1948 U.S. App. LEXIS 1986 (C.A.D.C. 1948).

Challenge to District of Columbia statutes allegedly prohibiting D.C. residents from lawfully possessing pistols, was not ripe for review; residents failed to demonstrate any injury resulting from enforcement of the statutes inasmuch as only one of them had applied for a registration certificate and been refused, more than 25 years previously, none of them utilized formal review process, and they were unable to establish any hardship that would result from utilizing such review process. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Defendant's claim on appeal, alleging that gun control statutes denied him rights protected by the Second Amendment, was foreclosed by prior binding precedents of Court of Appeals, which rejected claim. *Andrews v. United States*, 922 A.2d 449, 2007 D.C. App. LEXIS 232 (2007).

Trial court error in admitting hearsay testimony that identified defendant as one of two individuals that kidnapped victim prejudiced defendant and warranted reversal of his convictions for kidnapping, first-degree murder while armed, and possession of a firearm during a crime of violence; defendant never confessed to the crimes, and girlfriend of co-defendant only testified that defendant possessed revolver that was later identified as weapon that killed victim and that he gave revolver to co-defendant the following day. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

Reviewing evidence in light most favorable to Government, giving full play to rights of jury to determine credibility, weigh evidence and draw justifiable inferences of fact, evidence presented at trial reasonably permitted finding of

guilt beyond reasonable doubt of carrying a pistol without a license, possession of unregistered firearm, and possession of unregistered ammunition. D.C. Code §§ 6-1811 to 6-1861, 22-3204. *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

Where suppression order had been reversed, defendant then waived jury trial and stipulated that officers who had testified at suppression hearing would give same testimony at trial and that defendant did not possess license to carry pistol and case was then submitted without further evidence or argument, same issue and same record was before Court of Appeals on appeal from conviction of carrying pistol without license as had been before it on appeal from the suppression order and, therefore, appeal from conviction was frivolous and would be dismissed. D.C. Code Court of Appeals Rules, rule 42(c); D.C. Code §§ 22-3204, 23-104(a). *Walker v. United States*, 304 A.2d 290, 1973 D.C. App. LEXIS 281 (1973), writ of certiorari denied by 414 U.S. 1007, 94 S. Ct. 368, 38 L. Ed. 2d 245, 1973 U.S. LEXIS 1295 (1973).

— Presentation and reservation of grounds for review.

In prosecution for, inter alia, carrying a dangerous weapon, where comment by the court that if there was any believable evidence in the case, it was to effect that pistol was carried outside defendants' home or place of business was sustained by uncontradicted evidence and judge explicitly charged that all matters of fact were to be determined by the jury, no harm could result to defendants, who, in any event, failed to object. Fed.Rules Crim.Proc. rule 30, 18 U.S.C.; D.C. Code §§ 22-502, 22-3204. *United States v. Dixon*, 469 F.2d 940, 1972 U.S. App. LEXIS 7038 (C.A.D.C. 1972).

Error in murder prosecution instruction stating that in determining whether act is done with malice aforethought jury should bear in mind that every man is presumed to intend consequences of his act, without including elements of willfulness or want of justification, was not plain error in absence of other error in instructions. Fed.Rules Crim.Proc. rule 52(b), 18 U.S.C.; D.C. Code §§ 22-2403, 22-3204. *Mitchell v. United States*, 434 F.2d 483, 1970 U.S. App. LEXIS 9263 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 867, 91 S. Ct. 109, 27 L. Ed. 2d 106, 1970 U.S. LEXIS 775 (1970).

Where trial judge's charge contained two erroneous instructions equating intent with malice as essential ingredient of murder and stating that law infers or presumes malice from use of deadly weapon in commission of homicide and both instructions were later reread to jury and jury returned verdict, not of first-degree murder, but of murder in second degree and jury did not accept whole of government's evidence bearing on degree of defendant's cul-

pability, instructional errors would be noticed by Court of Appeals despite defendant's failure to object at trial and would require reversal of conviction of murder in second degree. D.C. Code §§ 22-2401, 22-3204; Fed.Rules Crim.Proc. rules 30, 52(b), 18 U.S.C. *United States v. Wharton*, 433 F.2d 451, 1970 U.S. App. LEXIS 11384 (C.A.D.C. 1970).

Defendant would not be heard on appeal to complain of deficiencies in instructions given by trial judge in manslaughter prosecution where none of alleged shortcomings were brought to attention of trial court by appropriate objection or request. D.C. Code §§ 22-2405, 22-3204; Fed.Rules Crim.Proc. rule 52(b), 18 U.S.C. *United States v. Carter*, 420 F.2d 150, 1969 U.S. App. LEXIS 10441 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1017, 90 S. Ct. 1253, 25 L. Ed. 2d 432, 1970 U.S. LEXIS 2440 (1970).

Record on appeal from conviction for carrying concealed pistol without license failed to establish plain error warranting reversal, notwithstanding failure to raise issue below, on ground that defendant's arrest for disorderly conduct was sham employed by police as gamble for detecting larger crime. D.C. Code 1961, §§ 4-140, 22-1107, 22-3204. *Johnson v. United States*, 370 F.2d 489, 1966 U.S. App. LEXIS 4290 (C.A.D.C. 1966).

Where although trial judge did not charge jury that it must find that the defendant intended to carry an unlicensed gun in a public place, defendant's trial counsel made no objection, but defendant testified that he intentionally put the gun in his pocket before leaving his shop, omission from the charge was not plain error which could be noticed on appeal in absence of exception in court below. D.C. Code 1951, § 22-3204. *Cooke v. U.S.*, 275 F.2d 887, 1960 U.S. App. LEXIS 5296 (C.A.D.C. 1960).

Though defendant did not expressly attack sentence imposed for carrying unlicensed pistol as being in excess of that authorized by law, and though he did not move in District Court that sentence be corrected, matter of legality of sentence could nevertheless be determined by Court of Appeals on appeal, since Court of Appeals can notice any error apparent from the record, whether called to its attention or not. D.C. Code 1951, §§ 22-3204, 22-3215; 18 U.S.C. § 2255; Fed.Rules Crim.Proc. rule 32(b), 18 U.S.C. *Jackson v. U.S.*, 221 F.2d 883, 1955 U.S. App. LEXIS 3592 (C.A.D.C. 1955).

Defendant preserved issue and had standing to challenge his convictions for carrying a pistol without a license (CPWL) and possession of an unregistered firearm (UF) under the Second Amendment by moving to dismiss indictment, even though he did not attempt to obtain a registration certificate and license for his handgun prior to his arrest. *Plummer v. United States*, 983 A.2d 323, 2009 D.C. App. LEXIS

572 (2009), reprinted as amended at 2009 D.C. App. LEXIS 753 (D.C. Nov. 12, 2009), amended by, modified by 2010 D.C. App. LEXIS 785 (D.C. May 20, 2010).

Assuming that psychologist's proposed expert testimony on battered woman syndrome (BWS) was subject to Frye standard for admissibility of scientific evidence, defendant could not demonstrate lack of requisite consensus, where defendant made no claim at trial that there were scientists who dissented from BWS methodology, and theory on which defendant relied was presented for first time on appeal. D.C. Code 1981, §§ 22-504, 22-3204(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

Admission of psychologist's expert testimony on battered woman syndrome (BWS) in domestic violence prosecution was not plainly wrong and did not result in or threaten miscarriage of justice; contrary to defendant's thesis, testimony was not "junk science." D.C. Code 1981, §§ 22-504, 22-3204(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

Defendant was required to demonstrate plain error to prevail on claim that trial judge did not make sufficient inquiry, in domestic violence prosecution, to determine whether psychologist's proposed testimony on battered woman syndrome (BWS) satisfied Dyas requirements for admissibility of expert testimony, where counsel failed to object to basic procedure utilized by judge in determining whether psychologist should be permitted to testify. D.C. Code 1981, §§ 22-504, 22-3204(b); Criminal Rule 52(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

Trial court's failure, in domestic violence prosecution, to give limiting instruction regarding use of psychologist's expert testimony on battered woman syndrome (BWS) was not plain error, where, on direct examination, psychologist testified that she had not met defendant or victim and that she had no opinion regarding defendant's guilt, and, on cross-examination, defendant elicited from psychologist, even more forcefully, exactly what testimony psychologist did not give. D.C. Code 1981, §§ 22-504, 22-3204(b); Criminal Rules 30, 52(b). *Nixon v. United States*, 728 A.2d 582, 1999 D.C. App. LEXIS 54 (1999), writ of certiorari denied by 528 U.S. 1098, 120 S. Ct. 841, 145 L. Ed. 2d 707, 2000 U.S. LEXIS 465, 68 U.S.L.W. 3432 (2000).

There was no plain error in charge instructing jury that if it credited defense evidence that defendant, a security guard who did not have license for carrying a gun, went from his house to his car with his gun and then drove straight to work, without threatening complaining witness with gun, defendant could not be found guilty of carrying pistol without a license, but that if jury credited Government's evidence that defendant threatened complaining witness with gun before traveling to work, defendant could be found guilty. D.C. Code 1981, §§ 4-114, 22-3204, 22-3205. *Shivers v. United States*, 533 A.2d 258, 1987 D.C. App. LEXIS 484 (1987).

Defendant, who specifically objected to first two prosecution witnesses on ground that each witness could not remember anything, preserved for review issue that prosecutor should not have called both witnesses in prosecution for armed robbery, assault with intent to kill while armed, assault with dangerous weapon, assault with intent to commit robbery while armed, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Defendant's failure to raise before trial court in support of motion to sever two robbery prosecutions justified decision of Court of Appeals not to consider arguments. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204; Criminal Rule 8(a). *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

In prosecution in which defendant was charged with only one count each of carrying pistol without license and possession of unregistered firearm even though there had been two guns involved, instructions were adequate under plain error standard. D.C. Code 1981, §§ 6-2311(a), 22-3204. *Chapman v. United States*, 493 A.2d 1026, 1985 D.C. App. LEXIS 402 (1985).

Error on part of trial court when, having agreed to instruct jury on both voluntary and involuntary manslaughter, it omitted latter instruction from its charge in prosecution for first-degree murder was not a basis for obtaining reversal under plain error rule in absence of a showing that defendant was deprived of substantial rights. D.C. Code 1981, §§ 22-2401, 22-2405, 22-3202, 22-3204; Criminal Rule 30. *Morris v. United States*, 469 A.2d 432, 1983 D.C. App. LEXIS 520 (1983).

In proceeding in which defendants were convicted of unlawful possession of narcotic drug and carrying pistol without license, admission of coparticipant's testimony that "Initially, I believe it was [certain officer] who said we were under arrest for robbery, I believe. This was at the scene, by the truck. When we got to the station, I was told of other charges" was not plain error on ground that it involved reference to crime for which defendants were not in-

dicted, in light of fact that reason for defendants' arrest was never again mentioned and they were impeached by prior convictions. D.C. Code §§ 22-3204, 33-402. *Lewis v. United States*, 379 A.2d 1168, 1977 D.C. App. LEXIS 271 (1977), affirmed by 486 A.2d 729, 1985 D.C. App. LEXIS 310 (D.C. 1985).

The identification of defendant's photograph by assault victim, the two lineup identifications, the composite drawing, defendant's presence in the area of the attack, the two in-court identifications of him, and the clothing recovered from his home left so small a probability that probable cause was lacking in the case that the discretion of the Court of Appeals to consider plain error would not be wisely exercised by entertaining unraised issue regarding the trial court's alleged error in not suppressing identifications flowing from photographs taken of defendant when he was allegedly taken to police station without probable cause. D.C. Code §§ 22-502, 22-3204; U.S. Const. Amend. 4. *Adams v. United States*, 302 A.2d 232, 1973 D.C. App. LEXIS 246 (1973).

Instruction that the Government had no affirmative duty to make a paraffin test of gun seized from defendant charged with assault with a dangerous weapon and with carrying a concealed weapon to determine if he had ever used it was not "plain error" warranting review in absence of objection. D.C. Code SCR, Criminal Rules, 52(b); D.C. Code §§ 22-502, 22-3204. *Wooten v. United States*, 285 A.2d 308, 1971 D.C. App. LEXIS 258 (1971).

In prosecution for carrying a dangerous weapon, wherein evidence disclosed that defendant was a part owner and in possession of apartment building where assault occurred, the prejudice to defendant from counsel's failing to mention the statutory exception to prohibition of carrying a weapon if carrying is in dwelling house or place of business or other land possessed by defendant required invocation of the "plain error" rule. D.C. Code § 22-3204. *Roumel v. United States*, 261 A.2d 240, 1970 D.C. App. LEXIS 203 (App. 1970).

Absent plain error, defendant's failure to voice objection to introduction of knife against him in prosecution for carrying deadly weapon precluded assertion on appeal that admission of the knife was error. D.C.C.E § 22-3204. *Best v. United States*, 237 A.2d 825, 1968 D.C. App. LEXIS 125 (App. 1968).

Statute making it an offense to carry a pistol without a license was not so clearly unconstitutional as a violation of defendant's constitutional right to keep and bear arms that it should have been ruled upon by trial court despite defendant's failure to raise point in trial court, and, in such circumstances, the Court of Appeals would decline to exercise its discretion to consider the constitutional question raised for first time on appeal. D.C. Code §§ 22-3204,

22-3206; U.S. Const. Amend. 2. *Best v. United States*, 237 A.2d 825, 1968 D.C. App. LEXIS 125 (App. 1968).

— Right of review.

Defendant waived right to challenge trial court's denial of leave to file untimely motion to dismiss indictment on ground that statute prohibiting carrying pistol without a license was unconstitutional under Second Amendment, where defendant failed to reserve in writing the right to seek review of ruling denying motion when defendant entered his conditional guilty plea. U.S. Const. Amend. 2; D.C. Code 1981, § 22-3204; Criminal Rule 11(a)(2). *Mitchell v. United States*, 746 A.2d 877, 2000 D.C. App. LEXIS 49 (2000).

Words "charged with a criminal offense" as used in statute providing that District of Columbia may appeal a suppression order entered before trial of a person charged with a criminal offense includes the term "delinquent act." D.C. Code §§ 22-3204, 23-104(a)(1). *District of Columbia v. M.E.H.*, 312 A.2d 561, 1973 D.C. App. LEXIS 395 (1973).

Where it was clear from repeated statements of trial judge in prosecution for having possession of a dangerous weapon, that the trial judge was not ruling on the information as such but on the ultimate guilt of the defendant under agreed statement of facts, and trial judge made an entry granting motion of defendant to dismiss and discharging defendant, such action was equivalent to the granting of a motion for judgment of acquittal, and therefore the United States had no right of appeal to Municipal Court of Appeals of the District of Columbia. D.C. Code 1940, §§ 22-3204, 22-3214, 23-105. *U.S. v. Martin*, 81 A.2d 651, 1951 D.C. App. LEXIS 178 (Cr.App. 1951).

— Scope of review.

Where, although at a pretrial hearing on a motion to suppress victim's identification of defendant, victim testified that it was one of two assailants, i.e., one later identified as defendant, who held gun, such testimony was not elicited at trial, Court of Appeals could not consider such testimony in determining whether a reasonable juror could find defendant guilty beyond a reasonable doubt of carrying an unlicensed pistol. D.C. Code § 22-3204. *Jackson v. United States*, 395 A.2d 99, 1978 D.C. App. LEXIS 573 (1978).

Disposition of cases of three individuals, who were arrested with defendant and charged with possession of implements of crime, was irrelevant to consideration of defendant's appeal from conviction for carrying pistol without a license, despite contention that fact that government dropped charges against other three individuals who were in hotel room with defendant indicated that police officer's entry into

the room, in which defendant was found holding gun, was illegal. D.C. Code §§ 22-3204, 22-3601. *Matthews v. United States*, 335 A.2d 251, 1975 D.C. App. LEXIS 351 (1975).

Since claim that possession of pistol was merely in self-defense and, hence, did not constitute a violation of statute making it a crime to carry a pistol without a license, was rejected by the jury, it was not subject to review on appeal. D.C. Code § 22-3204. *Matthews v. United States*, 335 A.2d 251, 1975 D.C. App. LEXIS 351 (1975).

Determination of whether evidence was sufficient to sustain conviction for carrying a dangerous weapon without a license would not be made where defendant was convicted upon sufficient evidence of a different offense and sentences imposed upon defendant for the two offenses ran concurrently. D.C. Code 1961, § 22-3204. *Hart v. United States*, 187 A.2d 329, 1963 D.C. App. LEXIS 175 (App. 1963).

— Standard of review, review.

In prosecution of defendant for carrying a pistol without a license, appellate court would review for plain error defendant's claim that trial judge erred by failing to provide jurors with an instruction defining the term "pistol" with regard to barrel length, given that defendant did not request such an instruction. *Brown v. United States*, 979 A.2d 630, 2009 D.C. App. LEXIS 370 (2009), writ of certiorari denied by 131 S. Ct. 819, 178 L. Ed. 2d 560, 2010 U.S. LEXIS 9811, 79 U.S.L.W. 3360 (U.S. 2010).

Entry of judgment on convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) was not plain error, even though defendant argued that the convictions were obtained in violation of the Second Amendment as construed by the United States Supreme Court in *District of Columbia v. Heller*, in which the Supreme Court held that the Second Amendment forbade any absolute prohibition of handguns held and used for self defense in the home; the jury found that defendant used the gun in question to assault another, and no evidence was presented that defendant possessed the gun for purposes of self defense. *Howerton v. United States*, 964 A.2d 1282, 2009 D.C. App. LEXIS 32 (2009).

Right to trial by jury.

Where indictment charged defendant with carrying a pistol without a license after having been convicted of a felony, and, on motion of defendant's counsel, reference to felony conviction was stricken, defendant was not entitled to a jury trial with respect to question of felony conviction. D.C. Code 1951, §§ 22-3204, 22-3215. *Jackson v. U.S.*, 221 F.2d 883, 1955 U.S. App. LEXIS 3592 (C.A.D.C. 1955).

Defendant was entitled to jury trial in trial for offense of carrying a pistol without a license, possession of unregistered firearm and possession of ammunition without valid registration, where maximum potential sentence of imprisonment for each offense was one year. D.C. Code 1981, §§ 6-2376, 16-705(a), 22-3204, 22-3215; Criminal Rule 23(a). *Jackson v. United States*, 498 A.2d 185, 1985 D.C. App. LEXIS 480 (1985).

Since, on charge of carrying a pistol without a license, the potential maximum imprisonment exceeded 90 days, defendant was entitled to a trial by jury. D.C. Code §§ 16-705(b)(1), 22-3204, 22-3215. *Copeny v. United States*, 353 A.2d 305, 1976 D.C. App. LEXIS 491 (1976).

Searches and seizures.

Officer had objectively reasonable basis for believing that additional weapons might be inside locked briefcase on backseat of car, justifying search of briefcase incident to driver's arrest for violating District of Columbia statute prohibiting carrying of deadly or dangerous weapons, following traffic stop, where officer had already found sheathed knife on backseat and butterfly knife hidden under floor mat, two cans of mace, and bag of earplugs. *United States v. Vinton*, 594 F.3d 14, 2010 U.S. App. LEXIS 2450 (C.A.D.C. 2010), writ of certiorari denied by 131 S. Ct. 93, 178 L. Ed. 2d 58, 2010 U.S. LEXIS 5909, 79 U.S.L.W. 3197 (U.S. 2010).

Where defendant, after patdown at scene of arrest for driving without proper permit resulted in discovery of five bullets, indicated, in response to question regarding presence of a gun, that gun was under front seat of car, seizure of gun was proper. D.C. Code § 22-3204. *United States v. Wheeler*, 459 F.2d 1228, 1972 U.S. App. LEXIS 11198 (C.A.D.C. 1972).

Where two police officers had been provided information by a reliable informant, indicating possible illegal narcotics activity and, after observing defendant and another emerge from building as predicted, officers had right to stop the occupants of the taxicab long enough to ask to talk to them and to investigate, seizure of the pistol, which defendant held in plain view of the officers, was proper and, once defendant was lawfully under arrest, the seizure of the cartridges, in reasonable search of the vehicle incident to such arrest, was clearly appropriate. D.C. Code §§ 22-502, 22-3204; U.S. Const. Amend. 4. *United States v. James*, 452 F.2d 1375, 1971 U.S. App. LEXIS 7018 (C.A.D.C. 1971).

Where officers, shortly after midnight and in area where many policemen had been shot, observed defendant driving vehicle bearing Virginia rental tags, followed him three or four minutes during which he made five turns and when officers called defendant back, after de-

fendant ran from vehicle which he parked with lights on and rear protruding five to seven feet into street, officers observed bulge under his sweater, officers' conduct in searching defendant was reasonable and gun found was admissible. D.C. Code § 22-3204; U.S. Const. Amend. 4. *United States v. Marshall*, 440 F.2d 195, 1970 U.S. App. LEXIS 8419 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 909, 91 S. Ct. 153, 27 L. Ed. 2d 148, 1970 U.S. LEXIS 608 (1970).

Where automobile stopped by police 45 minutes after offense was reliably identified as one used by suspect to leave scene of offense and search of defendant operator and his companion failed to produce any weapon, police had ample grounds for concluding that weapon used in assault was likely secreted in automobile, authorizing a warrantless search of automobile at scene of arrest, since only way in which a warrant could have been obtained would have been by temporarily seizing automobile and immobilizing it. U.S. Const. Amend. 4; D.C. Code §§ 22-502, 22-3204. *United States v. Free*, 437 F.2d 631, 1970 U.S. App. LEXIS 7754 (C.A.D.C. 1970).

Officer, observing a bulge in defendant's pants pocket as defendant was walking out of an apartment building with an older woman, had reasonable suspicion that defendant was carrying a concealed firearm, thus warranting investigatory stop and frisk; officer testified that shape and size of bulge was "consistent" with a firearm, defendant's awkward walk and hand movement seemed to be protective of the object secreted in the pocket, defendant appeared nervous as he repeatedly looked over his shoulder at officer, and officer's personal experience with carrying a loaded pistol in his pocket gave him a reasonable basis for perceiving that defendant was doing the same. *Singleton v. United States*, 998 A.2d 295, 2010 D.C. App. LEXIS 333 (2010).

Police officers had a reasonable suspicion to make an investigatory stop of defendant; the officers received a radio run, based on an anonymous tip, directing them to proceed to a location where a male of a certain description reportedly had a gun, the officers arrived at the location and corroborated the tip with respect to the physical and clothing description given by the tipster, defendant motioned to his waist when he saw the police vehicle, one officer interpreted the motion as indicating that defendant was armed, and defendant retreated into the van from which he had exited before the officers left their vehicle. *Green v. United States*, 974 A.2d 248, 2009 D.C. App. LEXIS 236 (2009).

Officers had reasonable articulable suspicion to believe that defendant, by operating a vehicle without a rear-view mirror, was violating motor vehicle laws on his approach to traffic safety compliance checkpoint, as to warrant

stop of defendant's vehicle; officer's testified they saw defendant driving a van without a rear-view mirror from a distance of approximately five to seven feet, government also introduced a photograph of that van which showed that it had no rear-view mirror, and officer testified that the photograph accurately reflected the state of the van when he stopped it. *Jones v. United States*, 972 A.2d 821, 2009 D.C. App. LEXIS 183 (2009).

Test for whether exigent circumstances existed justifying officers breaking into residence only five seconds after they knocked and announced their authority and purpose is how reasonable and experienced officer would respond under same circumstances. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b), 23-524, 23-524(a), 33-565(g); U.S. Const. Amend. 4; 18 U.S.C. § 3109. *Culp v. United States*, 624 A.2d 460, 1993 D.C. App. LEXIS 114 (1993).

Exigency existed justifying police officers breaking into residence using battering ram only five seconds after they knocked and announced that they were police officers executing search warrant, where police officers arrived at residence knowing that defendant was suspected of committing as many as 12 robberies using Uzi-type weapon, that defendant had used weapon to take human shield to insure safe escape after committing latest robbery, that Uzi had been seen on premises within past 24 hours, and officers' knock and announcement of their authority and purpose was met with silence even though they had seen lights and heard voices inside home. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b), 23-524, 23-524(a), 33-565(g); U.S. Const. Amend. 4; 18 U.S.C. § 3109. *Culp v. United States*, 624 A.2d 460, 1993 D.C. App. LEXIS 114 (1993).

Information provided by defendant's sister that defendant had gun in her bedroom did not give police officers probable cause to believe that defendant had committed any crime, in that mere possession of gun in dwelling place is not crime. D.C. Code 1981, § 22-3204; U.S. Const. Amend. 4. *Washington v. United States*, 585 A.2d 167, 1991 D.C. App. LEXIS 17 (1991).

Information provided by defendant's sister that defendant had gun in apartment did not indicate imminent emergency or exigent circumstances permitting warrantless entry or search of defendant's bedroom; officers found defendant's sister in living room by herself, found defendant on bed with no gun, and could have established probable cause by asking defendant's sister about size and nature of weapon, registration, and defendant's use of it. D.C. Code 1981, § 22-3204; U.S. Const. Amend. 4. *Washington v. United States*, 585 A.2d 167, 1991 D.C. App. LEXIS 17 (1991).

Police officer's testimony established that at time defendants were seized officers had probable cause to believe defendants had committed

traffic violations, and thus subsequent search of vehicle for weapons was justified. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204; U.S. Const. Amend. 4. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Factors to be considered in determining whether exigent circumstances evince a need that could not brook the delay incident to obtaining a warrant include whether a grave offense is involved, particularly a crime of violence, whether suspect is reasonably believed to be armed, whether there is a clear showing of probable cause, whether there is a strong reason to believe that suspect is in dwelling, whether escape is likely if not swiftly apprehended, whether there is a peaceful entry as opposed to a breaking, and whether entry is at day or night. D.C. Code 1973, § 22-3204. *Gaulmon v. United States*, 465 A.2d 847, 1983 D.C. App. LEXIS 452 (1983).

Not all the indicia of exigency need be present to justify a warrantless search. D.C. Code 1973, § 22-3204. *Gaulmon v. United States*, 465 A.2d 847, 1983 D.C. App. LEXIS 452 (1983).

Where defendant's possession of gun on day he was arrested was not a material element of charge of carrying a pistol without a license on a prior date in connection with a felony-murder, defendant could not invoke automatic standing doctrine that he need not make showing, otherwise required, of an interest in premises searched or property seized in order to challenge constitutionality of search and seizure. U.S. Const. Amend. 4; D.C. Code 1973, § 22-3204. *Austin v. United States*, 433 A.2d 1081, 1981 D.C. App. LEXIS 326 (1981).

In prosecution for carrying pistol without license, evidence supported finding that the pistol had been in plain view on floor of car driven by defendant. D.C. Code §§ 17-305, 22-3204. *Little v. United States*, 393 A.2d 94, 1978 D.C. App. LEXIS 336 (1978).

Defendant's presence at scene of observed crime constituted sufficient basis for making further inquiry, and in view of police officer's testimony concerning conditions at that time and place, officer could fairly conclude from defendant's nervous manner and attempt to shield newspaper from view that weapon was enclosed therein, and whether officer then squeezed newspaper while it was in defendant's hands or took paper from him, intrusion was limited to examination of "very object of hazardous concern" and as such was reasonable under Fourth Amendment. U.S. Const. Amend. 4; D.C. Code § 22-3204. *Crowder v. United States*, 379 A.2d 1183, 1977 D.C. App. LEXIS 283 (1977).

Where officer was lawfully arresting car's occupants when he saw gun in plain view on empty seat, he was justified in seizing gun and occupant was not entitled to have it sup-

pressed, in prosecution for carrying pistol without license receiving stolen government property and altering identification marks on weapon. D.C. Code §§ 22-2207, 22-3204, 22-3212; U.S. Const. Amend. 4. *Crawford v. United States*, 369 A.2d 595, 1977 D.C. App. LEXIS 424 (1977).

Where police received telephone tip from unknown informant indicating that grey bearded man wearing blue denim pants was standing in certain phone booth and had illegal pistol on his person, police arrived minutes later and found defendant in phone booth with grey beard and mustache and wearing blue denim pants, and defendant appeared to conceal something as police approached, reliability of informant's information was established, and thus police had reason to fear that defendant was carrying firearm on his person and were entitled for their own protection to conduct limited search of defendant for weapons. D.C. Code § 22-3204. *Lawson v. United States*, 360 A.2d 38, 1976 D.C. App. LEXIS 331 (1976).

Where demand for defendant's license and registration was made in legitimate investigation of speeding offense which police officers had earlier witnessed, pistol, butt end of which was protruding from paper bag resting between car seat and open door and which was in plain view during police officer's investigation, was subject to seizure and could properly be introduced into evidence. D.C. Code § 22-3204. *Hemsley v. United States*, 353 A.2d 14, 1976 D.C. App. LEXIS 477 (1976).

Where defendant, who had been stopped while operating his motor vehicle, had been placed under valid arrest, defendant's passenger was not in possession of a valid permit and police officers, being aware that recent crowd violence had resulted in injury to policeman, placed defendant and his passenger in one of the squad cars to transport them to nearby police station, one of the arresting officers rightfully entered defendant's automobile, which was blocking traffic, and, thus, pistol which such officer observed in plain view as he glanced at an area near clutch and brake pedal was properly seized, even if the passenger had been illegally arrested. D.C. Code § 22-3204. *Jones v. United States*, 330 A.2d 248, 1974 D.C. App. LEXIS 332 (1974).

Evidence that six-month-old warrant which was used to arrest defendant, whose automobile was found to contain a pistol for which defendant did not have a license, was based on the complaint of a citizen, was valid on its face, and was served by an officer who was authorized to serve it and who exercised proper diligence in verifying its legality sustained finding that arrest of defendant was not a mere sham to search defendant's automobile. D.C. Code §§ 22-3204, 23-563(b); D.C. Code SCR, Criminal Rule 4(c)(1, 2). *Rippy v. United States*,

322 A.2d 276, 1974 D.C. App. LEXIS 240 (1974).

Where first officer, believing that defendant was a major narcotics violator, stopped his cruiser and confronted defendant, who satisfied officer that defendant was not wanted on bench warrant, and where second officer saw defendant reaching several times to put his hand on his back pocket, belief of second officer that defendant might have been armed and dangerous was reasonable, so as to justify search which revealed pistol, in view of fact that second officer had not been able to hear conversation between first officer and defendant and did not speak to first officer before second officer reached into defendant's pocket and discovered pistol. D.C. Code § 22-3204. *Lyons v. United States*, 315 A.2d 561, 1974 D.C. App. LEXIS 370 (1974).

Police officers, after properly stopping car and frisking passenger, who was found to be carrying a loaded pistol, had probable cause to infer that some joint criminal enterprise was planned and to make a warrantless search of the car, resulting in the discovery of another revolver under driver's seat. D.C. Code § 22-3204. *Jeffreys v. United States*, 312 A.2d 308, 1973 D.C. App. LEXIS 397 (1973).

Discrepancy between name on license and registration, defendant's failure to know who owned vehicle, defendant's inherently incredible explanation of how he came to be driving vehicle, defendant's "furtive movement" on being honked at by officers after he had seen them following him, and mutilated inspection sticker on vehicle constituted probable cause for a reasonably prudent officer to arrest defendant for unauthorized use of a vehicle, and subsequent search of vehicle and defendant's person, with consequent discovery of a pistol, was lawful. D.C. Code § 22-3204. *Williams v. United States*, 304 A.2d 287, 1973 D.C. App. LEXIS 282 (1973).

Although defendant was seated in a car parked in an alley in a high crime area at approximately 3:30 A.M., and although it appeared that defendant, upon investigation by officers, began to get nervous and fumbled with something in area of his seat, it was not reasonable for officers to open car door, and search of car did not come within plain view or within any of other exceptions to warrant requirement, where there was no police report accusing defendant of having a gun, and there was no reason to believe that a crime other than a parking offense had been committed. D.C. Code § 22-3204. *Tyler v. United States*, 302 A.2d 748, 1973 D.C. App. LEXIS 256 (1973).

Where police officer was trying to ascertain the name of owner of an automobile he had ample reason to believe was stolen when officer in advertently came upon pistol in glove compartment at police station parking lot where

defendant and vehicle had been taken following arrest, the warrantless search and the seizure of the pistol, which served as basis for subsequent prosecution of carrying pistol without a license and possessing an unregistered firearm and unlawfully possessing ammunition, was not unreasonable. D.C. Code § 22-3204; U.S. Const. Amend. 4. *Patterson v. United States*, 301 A.2d 67, 1973 D.C. App. LEXIS 229 (1973).

Where police saw defendant pull to the curb in rented automobile, get out and begin walking down street, where one officer recognized defendant and also remembered that, about two weeks earlier, at a roll call, he had heard an announcement that there was a warrant for defendant's arrest for unauthorized use of a motor vehicle, where the officers drove up to defendant and questioned him about the vehicle, where defendant suggested that they drive him back to his automobile and he would show them the rental contract, and where the officers, as defendant was about to enter the patrol car, frisked him and discovered he was carrying a pistol without a license, the frisk could not, in view of the government's failure to establish the existence of a validly issued arrest warrant, be justified as incidental to a lawful arrest. D.C. Code §§ 22-2204, 22-3204. *Gilchrist v. United States*, 300 A.2d 453, 1973 D.C. App. LEXIS 221 (1973).

Where officer, in investigating gunshot, approached parked automobile and asked driver, who had been pointed out by other persons, to step from the vehicle, officer possessed right under the circumstances to be in position to have view of pistol lying on front seat, and seizure of the pistol, which was within plain view of officer, was proper and was not objectionable as product of a search, illegal or otherwise. D.C. Code § 22-3204. *Ragland v. United States*, 299 A.2d 141, 1973 D.C. App. LEXIS 209 (1973).

Action of one officer in reaching under front seat of defendant's automobile constituted an illegal search and pistol found under seat was inadmissible, in prosecution for carrying a pistol without a license, where, at time officer reached under seat, defendant had already been arrested for driving automobile with altered tags and having an altered registration and had been removed from his automobile and placed in police vehicle and officers had the altered tags and registration in their possession, no action of defendant indicated attempt to conceal contraband in automobile and officers had no reason to believe that automobile contained weapons or other contraband. D.C. Code § 22-3204. *Dickerson v. United States*, 296 A.2d 708, 1972 D.C. App. LEXIS 283 (1972).

Where police officers had probable cause to arrest when they stopped defendant some 26 minutes following robbery and within three

blocks of scene, it was immaterial whether search of paper bag defendant was carrying, which search revealed two fully loaded pistols, occurred prior to or following arrest; probable cause to arrest for robbery gave reasonable cause to search. D.C. Code § 22-3204. *Atkinson v. United States*, 295 A.2d 899, 1972 D.C. App. LEXIS 269 (1972).

Officer who received radio report that man of a specific description had a gun and was seated in a specific booth in a restaurant and who entered restaurant and saw defendant who matched description given in radio report acted reasonably in putting his gun to defendant's side and seizing gun from under defendant's coat. D.C. Code § 22-3204. *Murphy v. United States*, 293 A.2d 849, 1972 D.C. App. LEXIS 238 (1972).

Defendant, who removed revolver from his coat pocket and tossed it into street before pursuing policeman caught up to him, lacked standing to make motion to suppress the weapon as evidence. D.C. Code § 22-3204. *Smith v. United States*, 292 A.2d 150, 1972 D.C. App. LEXIS 417 (1972).

Actions of officers in stopping rented vehicle in order to determine if defendant had proper license and rental agreement was reasonable, and seizure of pistol which was in plain view of officer who was looking at interior of car with flashlight while other officer was engaged in conversation with defendant did not violate the Fourth Amendment. D.C. Code §§ 22-3204, 40-104(a); U.S. Const. Amend. 4. *Palmore v. United States*, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

Where pertinent municipal regulation authorized police to move an illegally parked automobile, conduct of officer, who observed defendant parked in bus zone and who arrested defendant for failure to have driver's permit in his possession, in opening door of defendant's automobile after defendant had been placed in police car and in seizing pistol which was in plain view on floor of automobile was proper and pistol was admissible in prosecution for carrying pistol without a license. D.C. Code §§ 22-3204, 40-301(c). *Banks v. United States*, 287 A.2d 85, 1972 D.C. App. LEXIS 340 (1972).

Findings in support of order granting pretrial motion to suppress pistol seized from beneath seat of defendant's automobile near scene of his arrest for disorderly conduct were insufficient where there were no findings upon which Court of Appeals could base judgment as to whether pistol was product of search and seizure incident to lawful arrest, whether, if so, seizure was so far beyond the area within defendant's immediate control as to be constitutionally impermissible, and whether, if pistol was not product of search and seizure in Fourth

Amendment sense (officer testified that he reached under seat in search of seat adjustment lever with intent of driving automobile to precinct station) the intrusion into the automobile was reasonable and warranted under the circumstances. D.C. Code §§ 22-1107, 22-3204; U.S. Const. Amend. 4. *United States v. Jones*, 275 A.2d 541, 1971 D.C. App. LEXIS 296 (1971).

Officer had probable cause to go into pocket of armed robbery suspect's jacket and seize pistol in pocket, where suspect was voluntarily returning to scene of crime with police officer and officer picked up suspect's jacket which was about to be left on fence and felt something heavy and sensed that it might be a pistol. D.C. Code § 22-3204. *Shepard v. United States*, 274 A.2d 413, 1971 D.C. App. LEXIS 282 (1971).

Officer who found 9 rounds of .22-caliber bullets on defendant's person when he was searched prior to incarceration after being stopped for traffic offenses and charged with disorderly conduct had probable cause to make warrantless search of automobile which defendant had been driving and which was owned by another person who had the right to drive the automobile away at any time, and to seize pistol which was seen protruding from under the automobile seat. D.C. Code § 22-3204. *Hurley v. United States*, 273 A.2d 840, 1971 D.C. App. LEXIS 278 (1971).

Officer, who was told by taxicab driver who pointed toward three men walking on street that driver had seen person up the street tuck gun under his belt, had probable cause to stop and search the only three men who were present on street even though taxicab driver did not say which of the men he had seen with gun and gun found on person of defendant in such search was admissible. D.C. Code §§ 22-3204, 23-306. *Gaskins v. United States*, 262 A.2d 810, 1970 D.C. App. LEXIS 229 (App. 1970).

Refusing to suppress evidence relating to weapon seized from defendant charged with carrying dangerous weapon on ground that it was obtained as result of unlawful search and seizure was not error, where evidence supported finding that defendant was not arrested until officer observed gun in defendant's hand. D.C. Code 1961, § 22-3204. *Contee v. United States*, 212 A.2d 342, 1965 D.C. App. LEXIS 222 (App. 1965).

Officer who was investigating speeding violation had probable cause to arrest operator of vehicle; he did not act unreasonably in opening door of vehicle once found and he was not required to disregard weapons which he saw when he opened vehicle's door, and motion to suppress evidence relating to blackjack and gun was properly denied. D.C. Code 1961, §§ 22-3204, 22-3214(a). *Mosley v. United States*, 209 A.2d 796, 1965 D.C. App. LEXIS 181 (App. 1965).

Removal of unlicensed pistol from floor of parked automobile did not constitute an unreasonable search and seizure where officer, who discovered pistol lying in plain view on automobile floor, was making an investigation at scene of reported burglary and after noticing defendant's keys in ignition in violation of law had opened automobile door to remove keys. D.C. Code 1951, § 22-3204. *Campbell v. U.S.*, 174 A.2d 87, 1961 D.C. App. LEXIS 317 (Cr.App. 1961).

Impounding of automobile, which motorist had parked in front of police station after being ordered to follow police officers to police precinct, was not authorized under regulation permitting impounding of unattended vehicles found parked in violation of traffic regulation, and pistol discovered in search of automobile was not admissible. D.C. Code 1951, § 22-3204. *Williams v. U.S.*, 170 A.2d 233, 1961 D.C. App. LEXIS 218 (Cr.App. 1961).

Where officers had probable cause to arrest defendant without warrant, ensuing search was legal and unregistered guns discovered thereby were admissible in evidence. D.C. Code 1951, §§ 22-3204, 23-306(a, b). *Cormier v. U.S.*, 137 A.2d 212, 1957 D.C. App. LEXIS 325 (Cr.App. 1957).

Self-defense, generally.

Where defendant, who was seated on right front fender of his automobile attacked by disorderly group of men and women, retreated to driver's side of automobile, obtained pistol on floor of automobile under driver's seat and fired on his pursuers while backing away, defendant was justified in using weapon in self-defense, and fact that he had it in his hands did not constitute violation of statute forbidding carrying of pistol on or about one's person without a license. D.C. Code 1940, § 22-3204. *Wilson v. U.S.*, 198 F.2d 299, 1952 U.S. App. LEXIS 3178 (C.A.D.C. 1952).

Self-defense is not a defense to charge of carrying a pistol without a license. D.C. Code § 22-3204. *Hurt v. United States*, 337 A.2d 215, 1975 D.C. App. LEXIS 368 (1975).

Sentence and punishment.

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime required proof of element that others did not, in that unregistered firearm required proof firearm was unregistered, unlawful possession of firearm by felon required proof that defendant was convicted felon, and carrying pistol without license required proof that defendant carried weapon. *Washington v. U.S.*, 2012 WL 2050378 (2012).

Trial court's rationale for sentencing defendant to a term of two to six years imprisonment

under two sentencing statute provisions, which term did not exceed the statutory limit for carrying a pistol without a license, indicated that court was sentencing defendant for a term of one to three years for carrying a pistol without a license and an additional one to three years on his prior convictions, even though court was only authorized to sentence defendant under one of the two applicable provisions; however, there was no such indication on the judgment and commitment order, and thus, a remand for resentencing was necessary due to the fact that the basis for the sentence was unclear. *Johnson v. United States*, 840 A.2d 1277, 2004 D.C. App. LEXIS 4 (2004).

Evidence supported defendant's conviction for carrying pistol without license, on aider and abettor theory; defendant and codefendant planned codefendant's sale of handgun to purchaser, and defendant associated himself with codefendant's possession of pistol and participated in it as something that he wished to bring about, that he sought by his action to make it succeed. D.C. Code 1981, § 22-3204(a). *Roy v. United States*, 652 A.2d 1098, 1995 D.C. App. LEXIS 6 (1995).

Evidence was sufficient to establish joint constructive possession of handgun by defendant and codefendant, who had planned codefendant's sale of handgun to third person, so as to support defendant's conviction for carrying pistol without license, despite fact that handgun deal never came to fruition; defendant and codefendant were associated together in ongoing venture centering around possession of unlicensed pistol, and defendant's action in negotiating deal with prospective purchaser directly caused pistol to be carried and possessed. D.C. Code 1981, § 22-3204(a). *Roy v. United States*, 652 A.2d 1098, 1995 D.C. App. LEXIS 6 (1995).

Trial court's imposition of a condition of restitution as part of sentence imposed upon defendant convicted of assault with a deadly weapon and possession of a pistol without a license was not contrary to statute nor an abuse of trial court's sentencing discretion. D.C. Code §§ 22-105, 22-502, 22-3204. *Barker v. United States*, 373 A.2d 1215, 1977 D.C. App. LEXIS 326 (1977).

In imposing a more severe sentence on conviction of carrying a pistol without a license where defendant has suffered a prior similar conviction or a prior felony conviction, the mandatory statutory procedure must be followed. D.C. Code §§ 22-3204, 23-111. *Coleman v. United States*, 295 A.2d 896, 1972 D.C. App. LEXIS 268 (1972).

Sentence of 360 days for carrying pistol without license was not excessive but was legally permissible under the statute providing that applicable penalty was fine of not more than \$1,000 or imprisonment for not more than one year, or both. D.C. Code 1961, §§ 22-3204,

22-3215. *Gillard v. United States*, 202 A.2d 776, 1964 D.C. App. LEXIS 262 (App. 1964).

Speedy trial rights.

Twenty-month delay between defendant's arrest and a second trial in which he was convicted of possession of dangerous weapon and four counts of first-degree murder was not so unreasonable, in absence of substantial showing of prejudice, as to require that charges be dismissed, in light of fact that there were no tactical or self-serving delays caused by Government, that most of the time chargeable to Government lapsed due to institutional delays and that defendant was responsible for or acquiesced in much of the delay. D.C. Code §§ 22-2401, 22-3204. *Strickland v. United States*, 389 A.2d 1325, 1978 D.C. App. LEXIS 478 (1978), writ of certiorari denied by 440 U.S. 926, 99 S. Ct. 1258, 59 L. Ed. 2d 481, 1979 U.S. LEXIS 927 (1979).

While 49-week delay in bringing defendant to trial on charges of possession of prohibited weapon and carrying a deadly weapon seemed excessive in view of nature of the offenses, delay was but one factor by which speedy trial claim was to be weighed. D.C. Code §§ 22-3204, 22-3214, 22-3214(a). *United States v. Perkins*, 374 A.2d 882, 1977 D.C. App. LEXIS 335 (1977).

Forty-nine-week interim between arrest and trial did not deny defendant a speedy trial since although demand for trial was timely made and defendant was ready for trial on all trial dates except during brief change of counsel, there was a clear lack of prejudice in that, among other things, defendant was not incarcerated and there were no identification or alibi issues that could have been eroded by the delay, at least two months' delay was of defendant's own making and 20 days before dismissal of the information for want of a speedy trial the same trial judge had found no speedy trial violation. D.C. Code §§ 22-3204, 22-3214, 22-3214(a). *United States v. Perkins*, 374 A.2d 882, 1977 D.C. App. LEXIS 335 (1977).

Stipulations.

Where defendant was charged with carrying unlicensed pistol after felony conviction, and, on defendant's motion, allegations in indictment concerning prior conviction of felony were stricken, and defendant's counsel, out of defendant's hearing, stipulated that defendant had previously been convicted of a felony and waived later proof thereof, but concession of counsel was made without defendant's knowledge or consent, there was no waiver by defendant of necessity of proof of felony conviction, and imposition of enhanced sentence, on ground of prior felony conviction, was error. D.C. Code 1951, §§ 22-3204, 22-3215. *Jackson*

v. U.S., 221 F.2d 883, 1955 U.S. App. LEXIS 3592 (C.A.D.C. 1955).

Although defendant's stipulation was tantamount to admission of guilt of carrying pistol without license, where trial court had advised defendant prior to accepting defendant's stipulation of his rights in accordance with rule governing advice trial court must give to defendant before accepting guilty plea, and defendant was again informed of his right to jury trial following defendant's withdrawal of his guilty plea, defendant understood his constitutional rights and knew that he was waiving them by virtue of the stipulation, and thus second hearing pursuant to such rule was not required. D.C. Code § 22-3204; D.C. Code SCR, Criminal Rule 11. *Glenn v. United States*, 391 A.2d 772, 1978 D.C. App. LEXIS 299 (1978).

Where defendant's stipulated suppression hearing testimony included his admission that he was in possession of gun wrapped in newspaper and defendant further stipulated that he had no license for the weapon, defendant's stipulation was tantamount to admission of guilt of carrying pistol without license. D.C. Code § 22-3204. *Glenn v. United States*, 391 A.2d 772, 1978 D.C. App. LEXIS 299 (1978).

Validity.

District of Columbia's statutory ban on carrying a pistol was unconstitutional under the Second Amendment, insofar as the statute could be interpreted to prohibit the keeping of a handgun in the home and preventing it from being moved throughout one's house; such a restriction would negate the lawful use upon which the right was premised, specifically self-defense. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

A state legislature does not violate equal protection provision of Fourteenth Amendment of United States Constitution, in enacting statutes which impose heavier penalty for second or subsequent offenses, since fact of prior conviction in such cases is considered as affording reasonable basis for classification. D.C. Code 1951, §§ 22-3204, 22-3215. *Kendrick v. U.S.*, 238 F.2d 34, 1956 U.S. App. LEXIS 3983 (C.A.D.C. 1956).

Complaint, alleging that enforcement of District of Columbia statute regulating manner in which firearms were to be stored violated federal statute prohibiting racial discrimination, failed to state a claim upon which relief could be granted, absent any allegation that plaintiff was purposefully discriminated against based on her race. *Seegars v. Ashcroft*, 297 F.Supp.2d

201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Assertions that plaintiffs, citizens of the District of Columbia, merely desired to obtain pistols to be possessed within the District, were insufficient to establish any injury resulting from enforcement of District's gun control statutes, and therefore plaintiffs lacked standing to challenge the statutes; plaintiffs' grievance was only generalized inasmuch as there was no threat of imminent prosecution. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Defendant's reliance on the common law doctrine of self-defense, in trial that resulted in acquittal of defendant on charges of second degree murder while armed and manslaughter while armed but conviction of defendant on the charge of carrying a dangerous weapon (CDW), was not sufficient to raise the constitutional claim that convicting him of CDW, as a result of carrying an ice pick for self defense, violated his Second Amendment rights. *Mack v. United States*, 6 A.3d 1224, 2010 D.C. App. LEXIS 612 (2010).

Defendant's mention of the due process clause, in post-trial motion for judgment of acquittal following trial that resulted in acquittal of defendant on charges of second degree murder while armed and manslaughter while armed but conviction of defendant on the charge of carrying a dangerous weapon (CDW), was not sufficient to raise the constitutional claim that convicting him of CDW, as a result of carrying an ice pick for self defense, violated his Second Amendment rights. *Mack v. United States*, 6 A.3d 1224, 2010 D.C. App. LEXIS 612 (2010).

Defendant failed to show plain error with regard to claim that statute underlying his carrying a pistol without a license (CPWL) convictions was unconstitutional on its face and that its application to convict him deprived him of his Second Amendment right to carry a firearm; the "facial invalidity" error that defendant asserted was not error at all, much less plain error, and defendant could not prevail on his claim that it was an obvious violation of his rights under the Second Amendment to convict him of CPWL outside the home. *Riddick v. United States*, 995 A.2d 212, 2010 D.C. App. LEXIS 264 (2010).

Convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) did not constitute plain error, despite argument that the convictions were in violation of the Second Amendment as construed by the United States Supreme Court in

District of Columbia v. Heller, in which the Supreme Court held that the Second Amendment forbade an absolute prohibition on handgun possession in the home; statutes were not facially invalid under *Heller*, and defendant was not in his own home at the time of offenses. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

Statutes governing offense of carrying a pistol without a license (CPWL) and offense of possession of an unregistered firearm (UF) were not facially invalid; statutes, which required licensing and registration of pistols or handguns, had legitimate and significant penal purpose. *Plummer v. United States*, 983 A.2d 323, 2009 D.C. App. LEXIS 572 (2009), reprinted as amended at 2009 D.C. App. LEXIS 753 (D.C. Nov. 12, 2009), amended by, modified by 2010 D.C. App. LEXIS 785 (D.C. May 20, 2010).

Finding that prosecution of defendant for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) did not violate his Second Amendment rights under *Heller*, which invalidated statutes banning handgun possession in the home, was not plain error; there was no evidence that when the police saw defendant toss pistol to the ground he was even within boundary lines or curtilage of his home, much less inside home itself, and no evidence linked defendant's possession of gun to any arguable motive of self-defense that had impelled him to remove gun from his home. *Sims v. United States*, 963 A.2d 147, 2008 D.C. App. LEXIS 493 (2008).

Defendant's claims that Second Amendment barred his prosecution for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) and that these statutes were constitutionally invalid on their face in light of *Heller*, which held that the Second Amendment conferred an individual right to keep and bear arms, were not preserved for appeal since the record revealed no indication that defendant raised these claims in the trial court. *Sims v. United States*, 963 A.2d 147, 2008 D.C. App. LEXIS 493 (2008).

Government's enforcement of statute criminalizing carrying a pistol without a license did not violate due process clause, even though defendant claimed that executive branch believed statute was unconstitutional as violative of the Second Amendment, where government's position was that statute was not unconstitutional either facially or as applied to defendant. *Austin v. United States*, 847 A.2d 391, 2004 D.C. App. LEXIS 163 (2004), writ of certiorari denied by 543 U.S. 895, 125 S. Ct. 185, 160 L. Ed. 2d 161, 2004 U.S. LEXIS 5267, 73 U.S.L.W. 3213 (2004).

District of Columbia firearms statutes did not violate constitutional right to keep and bear arms of defendant convicted of carrying pistol without license, possession of unregistered firearm, and unlawful possession of ammunition under those statutes. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204; U.S.C. Const.Amend. 2. *Sandridge v. United States*, 520 A.2d 1057, 1987 D.C. App. LEXIS 286 (1987), writ of certiorari denied by 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145, 1987 U.S. LEXIS 3348, 56 U.S.L.W. 3247 (1987).

Statute prohibiting carrying of concealed deadly or dangerous weapon is not unconstitutionally vague or indefinite in its prohibition of objects which are not ordinarily carried about person for personal convenience or for a legitimate purpose. D.C. Code § 22-3204. *Scott v. United States*, 243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

Verdict.

Acquittal by defendant of assault with a dangerous weapon did not require his acquittal on companion charge of carrying a pistol which he used to defend himself on ground that such acquittal demonstrated conclusively that defendant was carrying pistol for a lawful purpose notwithstanding defendant was exposed to a serious current threat by victim, that he did not have time to get a license and that he made a serious attempt to secure police protection, in light of the history of antiweapons legislation evidencing the clearest intent to drastically tighten ban on carrying dangerous weapons. D.C. Code 1951, §§ 22-502, 22-3204, 22-3214. *Cooke v. U.S.*, 275 F.2d 887, 1960 U.S. App. LEXIS 5296 (C.A.D.C. 1960).

Jury's return of not guilty verdict on charge of assault with a deadly weapon did not automatically require acquittal of defendant on charge of possession of firearm during crime of violence which was based on same incident. D.C. Code 1981, §§ 22-502, 22-3204. *Smith v. United States*, 684 A.2d 307, 1996 D.C. App. LEXIS 210 (1996).

Inconsistencies in jury's verdicts that defendants were guilty of possession of firearm during crime of violence (PFCV) but were not guilty of any predicate offenses did not warrant reversal of convictions; instructions to jury and notes from jury provided little basis for attributing confusion to jury, defense counsel never requested clarifying instruction in response to one note from jury, and evidence supported PFCV conviction. D.C. Code 1981, § 22-3204(b). *United States v. Dobyns*, 679 A.2d 487, 1996 D.C. App. LEXIS 134 (1996), writ of certiorari denied by 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060, 1997 U.S. LEXIS 3373, 65 U.S.L.W. 3782 (1997).

Where defendant was convicted of armed assault on police officer (AAPO) but acquitted of

assault with dangerous weapon (ADW), his conviction of possession of firearm during crime of violence (PFCV) was not improper on grounds that jury might have convicted defendant of PFCV based on belief that AAPO was proper predicate offense to PFCV, rather than ADW as alleged in indictment; the indictment was read to jury at beginning of trial, prosecutor explained in closing argument that ADW was predicate offense, and trial court instructed jury that possession of weapon must have occurred at time when defendant was engaged in commission of crime of violence. D.C. Code 1981, §§ 22-503, 22-505(b), 22-3204(b). *Ransom v. United States*, 630 A.2d 170, 1993 D.C. App. LEXIS 221 (1993).

No conclusions as to jury's confusion in convicting defendant of possession of firearm during crime of violence (PFCV) but acquitting him of assault with dangerous weapon (ADW) could be drawn from markings on verdict form, since it was unknown who made notations or if notations had support of each juror, and determining why juror or jurors made notations would require sheer speculation. D.C. Code 1981, §§ 22-503, 22-505(b), 22-3204(b). *Ransom v. United States*, 630 A.2d 170, 1993 D.C. App. LEXIS 221 (1993).

Trial court which individually polled jurors as to whether they agreed with announced guilty verdict as to last eight counts was not required to individually poll each juror with respect to agreement to each count and did not abuse discretion in prosecution for armed robbery, assault with intent to commit robbery and to kill while armed, assault with dangerous weapon, and carrying pistol without license. D.C. Code 1981, §§ 22-501, 22-502, 22-2901, 22-3202, 22-3204. *Arnold v. United States*, 511 A.2d 399, 1986 D.C. App. LEXIS 357 (1986).

Verdict finding defendant, who allegedly shot victim with pistol, guilty of manslaughter and not guilty of carrying pistol without license was not fatally inconsistent and did not require reversal. D.C. Code §§ 22-2405, 22-3204. *Steadman v. United States*, 358 A.2d 329, 1976 D.C. App. LEXIS 276 (1976).

Fact that jury acquitted defendant on charge of carrying a dangerous weapon did not require them to find defendant not guilty on charge of assault with deadly weapon. D.C. Code §§ 22-502, 22-3204. *Winters v. United States*, 317 A.2d 530, 1974 D.C. App. LEXIS 391 (1974).

Weight and sufficiency of evidence.

— Assault and battery offenses, weight and sufficiency of evidence.

Evidence sustained conviction for assault and carrying dangerous weapon. D.C. Code §§ 22-502, 22-3204. *United States v. White*, 429 F.2d 711, 1970 U.S. App. LEXIS 9357 (C.A.D.C. 1970).

Sufficient evidence of defendants' identities as perpetrators of charged assault with dangerous weapon and possession of firearm during crime of violence was provided by identifications made by victims and circumstantial evidence, in light of child victim's selection of photograph of one defendant from photo array and fact that adult victim pointed out both defendants to police when he saw them a second time the same night, within five to ten minutes after the assault, and had accurately described one defendant prior to his apprehension, and in light of evidence of defendants' consciousness of guilt in that one defendant fled and the other attempted to hide clothing which would identify him. D.C. Code 1981, §§ 22-502, 22-3204(b). *Peterson v. United States*, 657 A.2d 756, 1995 D.C. App. LEXIS 66 (1995).

Evidence, including testimony of complainant and others concerning incident, reasonably permitted a finding of guilt on charges of armed kidnapping, armed assault with intent to kill, and carrying a dangerous weapon. D.C. Code §§ 22-501, 22-2101, 22-3202, 22-3204. *Wooten v. United States*, 343 A.2d 281, 1975 D.C. App. LEXIS 240 (1975).

— Burglary offenses, weight and sufficiency of evidence.

Defendants' convictions for second-degree burglary while armed, armed robbery, and possession of firearm during crime of violence were supported by witnesses' identifications and other evidence including kind of clothing worn by defendants and car they were driving when they were apprehended. D.C. Code 1981, §§ 22-1801(b), 22-2901, 22-3202, 22-3204(b). *Gregg v. United States*, 754 A.2d 265, 2000 D.C. App. LEXIS 108 (2000), writ of certiorari denied by 531 U.S. 980, 121 S. Ct. 430, 148 L. Ed. 2d 438, 2000 U.S. LEXIS 7361, 69 U.S.L.W. 3316 (2000).

Lapse of 22 days between shooting and victim's identification of defendant as second gunman did not make identification so untrustworthy that evidence was insufficient to support convictions of first-degree burglary while armed and possession of firearm during crime of violence, where victim positively identified defendant at trial, victim testified that he saw faces of both intruders when they burst into his apartment and that daylight was coming in through window, crime took place in mid-morning, victim knew defendant for 10 years before shooting, victim was close to death for several days, and victim first stated that there was second gunman day after shooting. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-3204(b). *Gethers v. United States*, 684 A.2d 1266, 1996 D.C. App. LEXIS 226 (1996), writ of certiorari denied by 520 U.S. 1180, 117 S. Ct.

1458, 137 L. Ed. 2d 562, 1997 U.S. LEXIS 2437, 65 U.S.L.W. 3693 (1997).

— Carrying weapon, weight and sufficiency of evidence.

Conviction for District of Columbia offense of carrying pistol without license pursuant to proper instructions on elements of that offense established that jury must have found that defendant carried firearm and, thus, jury also must have had sufficient grounds to convict on "carry" prong of charged federal offense of using or carrying firearm during or in relation to drug trafficking offense. 18 U.S.C. § 924(c)(1); D.C. Code 1981, § 22-3204(a). *United States v. Taylor*, 949 F. Supp. 932, 1997 U.S. Dist. LEXIS 272 (1997).

Evidence that defendant taxicab driver did not need to move from front seat of his taxicab to obtain his pistol established that he had pistol "about his person" within statute prohibiting a party from carrying about his person a pistol without license. D.C. Code 1940, § 22-3204. *U.S. v. Waters*, 73 F.Supp. 72, 1947 U.S. Dist. LEXIS 2253 (D.D.C.1947).

Evidence was sufficient to support conviction of defendant for possession of a firearm during a crime of violence, at trial of two defendants for murder and other crimes arising out of a retaliatory shooting; two witnesses to the shooting testified they saw such defendant shoot at them. *Mitchell v. United States*, 985 A.2d 1125, 2009 D.C. App. LEXIS 651 (2009), writ of certiorari denied by 131 S. Ct. 226, 178 L. Ed. 2d 150, 2010 U.S. LEXIS 6110, 79 U.S.L.W. 3201 (U.S. 2010).

Evidence was sufficient to support convictions of defendants for carrying a pistol without a license (CPWL), at trial of two defendants for murder and other crimes arising out of a retaliatory shooting; Certificates of No Record (CNRs) of a license to carry a pistol for both defendants were admitted into evidence. *Mitchell v. United States*, 985 A.2d 1125, 2009 D.C. App. LEXIS 651 (2009), writ of certiorari denied by 131 S. Ct. 226, 178 L. Ed. 2d 150, 2010 U.S. LEXIS 6110, 79 U.S.L.W. 3201 (U.S. 2010).

Evidence was insufficient to support two defendants' convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and possession of unregistered ammunition (UA), even though the government presented proof that neither defendant had a license or registration for a pistol; the government's theory was that defendants aided and abetted a conspirator in his possession and carrying of a pistol, and the government did not present evidence that the coconspirator lacked a license and firearm registration on the day in question. *Walker v. United States*, 982 A.2d 723, 2009 D.C. App. LEXIS 541 (2009).

There was ample evidence from which the jury could infer that the gun was a “pistol” so as to support defendant’s conviction for carrying a pistol without a license; defendant repeatedly referred to the firearm as a pistol and specifically testified that the gun was a .45 pistol, witness testified that he saw defendant carrying the gun in his pocket, and defendant admitted that he carried the gun in his waistband. *Brown v. United States*, 979 A.2d 630, 2009 D.C. App. LEXIS 370 (2009), writ of certiorari denied by 131 S. Ct. 819, 178 L. Ed. 2d 560, 2010 U.S. LEXIS 9811, 79 U.S.L.W. 3360 (U.S. 2010).

There was sufficient evidence upon which jury could have found that defendant possessed a sawed-off shotgun, for purposes of charges of possession of an unregistered firearm and carrying a dangerous weapon outside the home or business; at trial, the government presented testimony that defendant had actual possession of the sawed-off shotgun prior to its being recovered by the police. *Wright v. United States*, 926 A.2d 1151, 2007 D.C. App. LEXIS 393 (2007).

Sufficient evidence supported conviction for carrying a dangerous weapon (CDW); defendant was seen with spray bottle of gasoline by two witnesses, and third observed her standing next to window ledge where bottle was located, defendant acknowledged that she was carrying gasoline to use as a weapon, and defendant’s motive to avoid her imminent eviction and her prior statements tying her likely eviction to prospective violent conduct by her, added force to reasonable inferences to be drawn from other circumstantial evidence that she intended to use her bottle of gasoline not just to “spray people,” but to cause explosion that could have seriously injured others. *Savage-El v. United States*, 902 A.2d 120, 2006 D.C. App. LEXIS 357 (2006).

Finding that defendant carried knife for use as a weapon was supported, in prosecution for carrying dangerous weapon, by evidence that defendant was sitting alone in a car late at night, in a neighborhood known for drug activity, with a substantial quantity of drugs in the pocket of his jacket, and that knife he was carrying was a three-inch dagger. *Reed v. United States*, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

Evidence in prosecution for attempted carrying of dangerous or deadly weapon supported finding that defendant carried concealed knife for use as “dangerous weapon”; defendant was attempting to enter government building with knife, explanation he gave for his presence was highly dubious, knife was nearly nine inches long when opened, it could not be described as “friendly-looking instrument,” and defendant offered no innocent explanation regarding rea-

son he was carrying it. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

In prosecution for possession of prohibited weapon and carrying a deadly or dangerous weapon, evidence that defendant was carrying a paring knife in the context of telling complainant to stop looking at him and get away from him, and that the knife was knowingly presented to complainant, was sufficient to show carrying of possession of knife with intent to use it unlawfully, and, thus, that knife thus constituted a dangerous weapon. D.C. Code 1981, §§ 22-3204, 22-3214(b). *Mihav v. United States*, 618 A.2d 197, 1992 D.C. App. LEXIS 341 (1992).

Evidence that defendant had a pistol on his person, which he pulled out and used to threaten victim, was sufficient to support his conviction of carrying a pistol without a license despite lack of evidence that he transported pistol “from place to place.” D.C. Code 1981, § 22-3204. *Butler v. United States*, 614 A.2d 875, 1992 D.C. App. LEXIS 188 (1992), writ of certiorari denied by 506 U.S. 1009, 113 S. Ct. 625, 121 L. Ed. 2d 558, 1992 U.S. LEXIS 7611, 61 U.S.L.W. 3401 (1992).

In prosecution for carrying a deadly or dangerous weapon capable of being concealed on or about the person, evidence that defendant both intended to and did carry and twirl around his body a nunchaku in the midst of a crowd of onlookers and had no explanation as to any reasons he had for carrying the nunchaku at time and in the area of his arrest was sufficient to support finding that defendant was carrying a deadly or dangerous weapon in violation of dangerous weapons statute. D.C. Code 1981, § 22-3204. *In re S.P.*, 465 A.2d 823, 1983 D.C. App. LEXIS 453 (1983).

— Constructive possession, weight and sufficiency of evidence.

Evidence was insufficient to show that juvenile intended to exercise dominion and control over loaded pistol found during execution of warrant to search residence and, thus, was insufficient to support, on a theory of constructive possession, adjudication of guilt in delinquency case for carrying a pistol without a license, unlawful possession of an unregistered firearm, and unlawful possession of ammunition for an unregistered firearm, even though pistol was in close proximity to juvenile in her bedroom, and juvenile knew that pistol was present; juvenile’s adult boyfriend was in bedroom with juvenile, and nothing showed that it was not boyfriend who owned pistol and brought it to bedroom. *In re R.G.*, 917 A.2d 643, 2007 D.C. App. LEXIS 79 (2007).

Evidence was sufficient to find that defendant was in at least constructive possession of gun found in his station wagon, and thus, was sufficient to support convictions for possessory

weapons offenses; government's evidence established that defendant owned the station wagon and that he was its driver on the night he was arrested, and police officers testified that the loaded revolver was on the car's floor at defendant's right thigh. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Evidence established that defendant charged with carrying pistol without a license (CPWL) had constructive possession of pistol; when police officers stopped ice cream truck that defendant was driving and started to approach truck, defendant walked to back of truck and reached into potato chip box in which gun was later found, thus permitting inference that defendant was trying to hide gun from police and that defendant had knowledge of gun's presence and the intent and ability to guide its destiny. D.C. Code 1981, § 22-3204(a). *White v. United States*, 714 A.2d 115, 1998 D.C. App. LEXIS 113 (1998).

Evidence was sufficient to support driver's possession of firearms and ammunition on theory of constructive possession; police saw someone throw dark object size of gun from right front window as defendant's vehicle entered alley, officer later found .44 caliber pistol at that spot, and another officer found matching bullets under defendant's seat, although it had been raining off and on for several days, gun was barely damp, and holster was only partially wet. D.C. Code 1981, § 22-3204(a). *McGriff v. United States*, 705 A.2d 282, 1997 D.C. App. LEXIS 278 (1997), writ of certiorari denied by 523 U.S. 1086, 118 S. Ct. 1542, 140 L. Ed. 2d 690, 1998 U.S. LEXIS 2729, 66 U.S.L.W. 3688 (1998).

Defendant's conviction for possession of firearm during crime of violence was supported by undisputed evidence that victim had been shot in back, by eyewitness identifications of defendant's 14-year-old son as gunman, and by uncontradicted testimony that defendant had told her son to shoot gun, which was sufficient to establish both knowing participation by defendant in son's assault and constructive possession of weapon. D.C. Code 1981, § 22-3204(b). *Smith v. United States*, 684 A.2d 307, 1996 D.C. App. LEXIS 210 (1996).

Evidence was sufficient to support jury findings that defendants constructively possessed pistol and other contraband, including drugs, found by police in apartment, despite contention that government failed to establish that defendants exercised dominion and control over drugs, gun, or any other contraband; circumstantial evidence linked both defendants to gun, as well as to drugs and other contraband found in apartment. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

Facts were sufficient to establish that defendant had constructive possession of pistol used as murder weapon, for purposes of conviction for carrying a pistol without a license, where defendant supplied shotguns used in crime, and knew shotguns and pistol were loaded, and where, after shooting and robberies, defendant and cohorts ran from scene and hid guns all together; thus, defendant had knowledge of presence of pistol at scene and had ability to, and did, exercise control over weapon as required to show constructive possession. D.C. Code 1981, § 22-3204(a). *White v. United States*, 647 A.2d 766, 1994 D.C. App. LEXIS 157 (1994).

Constructive possession of weapon may be established by either direct or circumstantial evidence. D.C. Code 1981, § 22-3204. *Brown v. United States*, 546 A.2d 390, 1988 D.C. App. LEXIS 135 (1988).

Although weapon was not in actual possession of defendant at time of its discovery, constructive possession, required to support conviction for carrying pistol without a license, was established by evidence from which jury could find that defendant was aware both that companion possessed a gun throughout the evening and that he placed it under the car seat as police pulled the automobile over to the curb, and evidence of proximity sufficient to permit jury to infer convenient access. D.C. Code 1981, § 22-3204. *Brown v. United States*, 546 A.2d 390, 1988 D.C. App. LEXIS 135 (1988).

Constructive possession of weapon may be established by either direct or circumstantial evidence. D.C. Code 1981, §§ 6-2311, 22-3204. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Evidence, which established that unlicensed pistol was found in automobile carrying defendants, was sufficient to support prosecution's theory of joint constructive possession; thus, defendant's conviction for carrying pistol without license was not without sufficient evidentiary support. D.C. Code § 22-3204. *Hamilton v. United States*, 395 A.2d 24, 1978 D.C. App. LEXIS 352 (1978).

Evidence that pistol was located on console between driver and defendant passenger and that passenger had ammunition in his coat pocket of same caliber as pistol was sufficient to establish constructive possession in passenger. D.C. Code § 22-3204. *Jones v. United States*, 299 A.2d 538, 1973 D.C. App. LEXIS 215 (1973).

— Homicide offenses, weight and sufficiency of evidence.

Direct and circumstantial evidence which included testimony of eyewitnesses and of accomplice who drove truck in which assailants departed from murder scene was sufficient to allow jury to find beyond a reasonable doubt

that defendant was the short, stocky man with a .38-caliber firearm who was at the scene of a double murder and had shot the two victims. D.C. Code §§ 22-2401, 22-3204. *United States v. De Loach*, 530 F.2d 990, 1975 U.S. App. LEXIS 11259 (C.A.D.C. 1975), writ of certiorari denied by 426 U.S. 909, 96 S. Ct. 2232, 48 L. Ed. 2d 834, 1976 U.S. LEXIS 1882 (1976).

Evidence that defendant was armed and was threatening one individual with serious bodily injury, that he was aware that he was being followed by uniformed special officer and that defendant turned and shot uniformed officer was sufficient, apart from issue of mental responsibility, to support verdict finding defendant guilty of second-degree murder of the officer and of carrying a dangerous weapon. D.C. Code §§ 22-2401, 22-3204. *United States v. Taylor*, 510 F.2d 1283, 1975 U.S. App. LEXIS 15297 (C.A.D.C. 1975).

Evidence was sufficient to support co-defendant's conviction of possession of a firearm during the commission of a dangerous offense; co-defendant admitted shooting victim in the head while another co-defendant shot the victim in the body, and ballistic evidence corroborated co-defendant's statement. *Hammond v. United States*, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

Sufficient evidence supported conviction for possession of a firearm during the commission of a crime of violence (PFCOV) and carrying a pistol without a license (CPWL) under theory of aiding and abetting; government introduced evidence that neither co-defendant had valid license to carry firearm, there was ample evidence to show that one defendant shot and killed victim, and there was ample evidence to find that second defendant was active in conspiracy and also aided and abetted the crimes of PFCOV and CPWL. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Defendants' convictions for premeditated first-degree murder while armed, assault with intent to kill, carrying pistol without license, and possessing firearm during crime of violence were supported by testimony of officer who witnessed shooting, testimony of two surviving victims, and testimony of defendants' acquaintance. D.C. Code 1981, §§ 22-501, 22-2401, 22-3202, 22-3204(a, b). *Payne v. United States*, 697 A.2d 1229, 1997 D.C. App. LEXIS 163 (1997).

Defendant's own testimony that he shot victim and eyewitness' testimony that he saw defendant shoot victim and victim fall to ground after bullet went through his head was

sufficient to sustain defendant's convictions for second-degree murder while armed, possession of firearm during crime of violence, and carrying pistol without license, though neither gun nor bullet was recovered. D.C. Code 1981, §§ 22-2403, 22-3202, 22-3204(b). *Curington v. United States*, 621 A.2d 819, 1993 D.C. App. LEXIS 52 (1993).

— In general.

Uncontradicted and convincing evidence, including defendant's own testimony, established that she received and possessed a pistol which had moved in interstate commerce and that she had no license therefor and, hence, was sufficient to sustain convictions of knowingly receiving a firearm in interstate commerce with its serial number removed and of carrying an unlicensed firearm. D.C. Code § 22-3204; 18 U.S.C. § 922(k). *United States v. Dorsey*, 591 F.2d 922, 1978 U.S. App. LEXIS 6845 (C.A.D.C. 1978).

Evidence, including eyewitness testimony, was sufficient to support finding that unrecovered gun was "pistol," that is, that its barrel was less than twelve inches long, for purposes of prosecution for carrying pistol without license (CPWL). D.C. Code 1981, § 22-3204. *Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Evidence, though conflicting, supported finding that defendant's possession of firearm was not lawful under statutory exception for possession in dwelling house; although defendant's evidence indicated apartment was his home, substantial evidence indicated defendant did not live there and that apartment was merely used as place to do drugs. D.C. Code 1981, § 22-3204. *Hilliard v. United States*, 638 A.2d 698, 1994 D.C. App. LEXIS 28 (1994).

Testimony that officers saw vehicle pull over slightly and slow down, that passenger door opened and was held steady, and that object was thrown from car shortly before defendants' vehicle stopped, and that gun was found three or four car lengths behind supported inference that driver and both passengers had knowledge and control of gun recovered from street and, thus, supported convictions for carrying pistol without license and possession of unregistered firearm. D.C. Code 1981, §§ 6-2311, 22-3204. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Evidence supported defendant's conviction for carrying a pistol without a license, even though the weapon used in the homicide was never recovered by police and evidence introduced at trial traced spent bullets found a few feet from victim's head as coming from a "revolver." D.C. Code 1981, §§ 22-2301(a), 22-3204. *Gates v. United States*, 481 A.2d 120, 1984 D.C. App. LEXIS 460 (1984), writ of certiorari denied by 470 U.S. 1058, 105 S. Ct.

1772, 84 L. Ed. 2d 832, 1985 U.S. LEXIS 1485, 53 U.S.L.W. 3669 (1985).

Evidence of defendant's possession of knife was sufficient to establish the requisite general intent to uphold his conviction for carrying a deadly weapon. D.C. Code 1981, § 22-3204. *Mackey v. United States*, 451 A.2d 887, 1982 D.C. App. LEXIS 462 (1982).

Where, with full knowledge that possession of pistol was illegal, defendant retained it for more than 12 hours and then carried it still loaded on the street, his claim that he was merely returning the pistol, which he claimed he had found in his apartment after a burglary of that apartment, to the police was insufficient to support claim of innocent possession. D.C. Code § 22-3204. *Carey v. United States*, 377 A.2d 40, 1977 D.C. App. LEXIS 363 (1977).

Evidence sustained conviction of defendant, a passenger in rear seat of car, for carrying without a license a pistol which was found on the passenger side of front seat. D.C. Code § 22-3204. *Johnson v. United States*, 309 A.2d 497, 1973 D.C. App. LEXIS 354 (1973), writ of certiorari denied by 416 U.S. 951, 94 S. Ct. 1960, 40 L. Ed. 2d 301, 1974 U.S. LEXIS 647 (1974).

Evidence was sufficient to support conviction as a repeat offender of carrying a pistol without a license against defendant who was pointed out to police officers after officers heard a gunshot and who was found in automobile which had operable pistol, which had fresh smell of gunpowder and contained five live rounds of ammunition and one expended round, lying on the front seat. D.C. Code § 22-3204. *Ragland v. United States*, 299 A.2d 141, 1973 D.C. App. LEXIS 209 (1973).

Evidence sustained conviction of right front seat passenger of carrying unlicensed pistol which was lying on left side of rear seat of automobile, notwithstanding defendant's contention that she did not have possession of the pistol. D.C. Code § 22-3204; 18 U.S.C. § 5005 et seq. *Holley v. United State*, 286 A.2d 222, 1972 D.C. App. LEXIS 329 (1972).

Evidence sustained conviction for carrying a pistol without a license, although the government did not offer any direct proof of defendant's knowledge of gun. D.C. Code § 22-3204. *Powell v. United States*, 246 A.2d 641, 1968 D.C. App. LEXIS 209 (App. 1968).

Evidence that knife taken from defendant in movie theater was ten inches long when extended with blade slightly more than four and one-half inches from shank to tip supported finding that knife was a deadly weapon within meaning of statute prohibiting carrying of concealed deadly or dangerous weapon. D.C. Code § 22-3204. *Scott v. United States*, 243 A.2d 54, 1968 D.C. App. LEXIS 163 (App. 1968).

Evidence supported finding that hawk-bill knife found in pocket of defendant who was

unable to explain his presence in hallway of building which was usually kept locked and which public was not invited to enter constituted a "dangerous weapon" within statute. D.C. Code § 22-3204. *Best v. United States*, 237 A.2d 825, 1968 D.C. App. LEXIS 125 (App. 1968).

Evidence supported conviction for carrying a deadly weapon. D.C. Code § 22-3204. *Perry v. United States*, 230 A.2d 721, 1967 D.C. App. LEXIS 174 (App. 1967).

Evidence sustained conviction for carrying concealed weapons. D.C. Code 1951, § 22-3204. *Emburgh v. U.S.*, 164 A.2d 342, 1960 D.C. App. LEXIS 257 (Cr.App. 1960).

— Insanity or other incapacity, weight and sufficiency of evidence.

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendant's mental impairment as to require his exculpation. D.C. Code §§ 22-502, 22-2901, 22-3202, 22-3204; 18 U.S.C. *United States v. Wilson*, 471 F.2d 1072, 1972 U.S. App. LEXIS 7095 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 957, 93 S. Ct. 1431, 35 L. Ed. 2d 691, 1973 U.S. LEXIS 3264 (1973).

— Knowledge and control of weapon, weight and sufficiency of evidence.

Jury's apparent discrediting of defendant's testimony that he knew nothing of gun found in automobile that defendant was driving, in finding that defendant knowingly possessed gun, was not alone sufficient basis to affirm defendant's convictions for carrying firearm during and in relation to drug trafficking crime and carrying pistol without license, upon defendant's challenge that government did not present sufficient evidence to establish such knowledge. 18 U.S.C. § 924(c)(1); D.C. Code 1981, § 22-3204(a). *United States v. Toms*, 136 F.3d 176, 1998 U.S. App. LEXIS 3164 (C.A.D.C. 1998).

Evidence that defendant knew that weapon was present under seat in automobile before police stopped vehicle and testimony that both officers saw the gun in defendant's hand supported trial court's finding that defendant was "carrying" the pistol within meaning of statute prohibiting one who has been convicted of a felony from carrying a dangerous weapon. D.C. Code § 22-3204. *United States v. James*, 452 F.2d 1375, 1971 U.S. App. LEXIS 7018 (C.A.D.C. 1971).

Evidence supported trial court's finding in delinquency case that juvenile had knowledge of presence of loaded pistol found during execu-

tion of warrant to search residence, for purpose of determining whether juvenile had constructive possession of pistol and ammunition and, thus, whether evidence supported adjudication of guilt for carrying a pistol without a license, unlawful possession of an unregistered firearm, and unlawful possession of ammunition for an unregistered firearm; pistol was located in close proximity to juvenile and in room that was habitually occupied by her. In re R.G., 917 A.2d 643, 2007 D.C. App. LEXIS 79 (2007).

Evidence was sufficient to convict defendant of weapons offenses; defendant was owner of vehicle and was driving it on night of traffic stop, defendant twice attempted to move his hand directly toward handgun, and defendant once batted forward a bag of chips resting on front seat, with apparent purpose in each instance to conceal or cover butt of gun which could be seen protruding from underneath front seat, and evidence of defendant's gestures provided more than a sufficient basis upon which jurors could infer that defendant both knew of gun and intended to conceal it. Williams v. United States, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

With respect to possessory weapons offenses, knowledge of the whereabouts of the weapon may be inferred from circumstantial evidence. White v. United States, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Evidence was insufficient to support weapons convictions on theory that defendant constructively possessed gun carried by companion who, when officers sought to question defendant and companion about automobile they had just exited, placed gun on ground near automobile while defendant watched; while fact finder could infer that defendant knew of presence of gun, gun was inferentially in companion's sole possession throughout time police observed defendant and companion. D.C. Code 1981, §§ 6-2311(a), 22-3204. In re L.A.V., 578 A.2d 708, 1990 D.C. App. LEXIS 215 (1990).

Evidence of proximity is sufficient to permit jury to infer that defendants had convenient access and thus "dominion and control" over guns. D.C. Code 1981, §§ 6-2311, 22-3204. Logan v. United States, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

In prosecution for armed robbery and carrying a pistol without a license, evidence did not support defendant's conviction on weapons charge, where it was undisputed that only one defendant carried weapon during armed robbery, there was no direct evidence that the other ever carried or had "convenient access" to it, before, during, or after robbery, and fact that there was strong circumstantial evidence that unlicensed pistol was in getaway car in which both defendants were riding did not mean that a jury could reasonably find that defendants jointly possessed unlicensed pistol. D.C. Code

§ 22-3204. Jackson v. United States, 395 A.2d 99, 1978 D.C. App. LEXIS 573 (1978).

Fact that there were three persons and three pistols in car, together with suspicious activity of occupants prior to their car being halted, provided sufficient grounds for jury, in prosecution for carrying a pistol without a license, to conclude that defendant knew of presence of the pistol. D.C. Code § 22-3204. Johnson v. United States, 309 A.2d 497, 1973 D.C. App. LEXIS 354 (1973), writ of certiorari denied by 416 U.S. 951, 94 S. Ct. 1960, 40 L. Ed. 2d 301, 1974 U.S. LEXIS 647 (1974).

Evidence was sufficient to support conviction of carrying a pistol without a license, possessing an unregistered firearm and unlawfully possessing ammunition against defendant who was driving vehicle which had been loaned to him by his employer and had been previously driven by numerous employees and customers of employer, and in glove compartment of which police officer found a pistol. D.C. Code § 22-3204. Patterson v. United States, 301 A.2d 67, 1973 D.C. App. LEXIS 229 (1973).

Evidence that pistol was found on floor mat of defendant's automobile shortly after he alighted from automobile, that automobile was owned by defendant and that ammunition found in possession of defendant was of same caliber as that of pistol found in automobile was sufficient to show that defendant had been in possession of pistol and sustained conviction of carrying pistol without a license despite contention that woman passenger in automobile could have placed pistol on floor mat without defendant's knowledge after he had been removed from automobile. D.C. Code § 22-3204. Banks v. United States, 287 A.2d 85, 1972 D.C. App. LEXIS 340 (1972).

Evidence on issues whether defendant, who was occupying driver's seat of automobile belonging to his wife and who along with codefendant had previously created disturbance at nightclub, had knowledge and control of revolver, which was found under passenger side of front seat of automobile at time it was being occupied by defendant and codefendant, who was sitting on passenger side of front seat, was sufficient to support conviction of carrying pistol without a license. D.C. Code § 22-3204. Porter v. United States, 282 A.2d 559, 1971 D.C. App. LEXIS 218 (1971).

Evidence sustained finding that defendant, who was charged with carrying pistol without a license, had requisite knowledge and control of weapon found between backrest and seat to left of where defendant had been sitting in automobile. D.C. Code § 22-3204. Kenhan v. United States, 263 A.2d 253, 1970 D.C. App. LEXIS 240 (App. 1970).

— Motor vehicle offenses, weight and sufficiency of evidence.

Testimony by two police officers that they saw defendant take gun from his belt and

replace it, that they saw defendant enter driver's side of a van, subsequently found to be stolen, that they subsequently saw three men standing near the van with defendant closest to it, and testimony by one of the two officers that he saw defendant drop the gun sustained defendant's convictions for unauthorized use of a motor vehicle and carrying a pistol without a license. D.C. Code §§ 22-2204, 22-3204. *Reed v. United States*, 312 A.2d 775, 1973 D.C. App. LEXIS 403 (1973).

— Operability of weapon, weight and sufficiency of evidence.

Evidence supported a finding, on charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, that handgun at issue was operable; although a bullet was stuck in barrel when one officer recovered handgun, officer officers merely pushed it out, and the weapon was successfully test-fired thereafter. *Wynn v. United States*, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Sufficient evidence supported conviction for carrying a pistol without a license (CPWL); while there was no direct evidence on the gun barrel length, a firearms expert first distinguished between revolvers and semiautomatic or fully automatic pistols and then testified that the bullet fragments and cartridge found at the scene "would have been fired in a semi-automatic pistol" or "fully automatic," and this expert testimony was sufficient to enable a reasonable juror to conclude that the gun used to kill the victim was a pistol. *Hobbs v. United States*, 18 A.3d 796, 2011 D.C. App. LEXIS 216 (2011).

Operability of gun at issue on charge of carrying a pistol without a license (CPWL) was supported by sufficient evidence, including evidence that charged juvenile lifted up his shirt and showed gun as part of his threatening conduct, and that despite the arrival of the police, he and another boy elected to re-emerge from building and recover their guns, which they had ditched when police came. *In re R.S.*, 6 A.3d 854, 2010 D.C. App. LEXIS 605 (2010).

Evidence was insufficient to show that the pistol that defendant carried was operable so as to support his conviction for carrying a pistol without a license; evidence showed only that defendant had what appeared to be a revolver which he never pointed while with two men who had operable semi-automatic weapons, and it was too speculative to infer from these facts that defendant's weapon, which the other evidence tended to show was not used, must also have been operable. *Price v. United States*, 813 A.2d 169, 2002 D.C. App. LEXIS 723 (2002).

Convictions of possession of firearm during crime of violence (PFCV) were supported by

evidence that defendants seized victim against her will from sidewalk and attempted to place her in car for unknown purposes, that one defendant used imitation weapon to get victim into car, and that one defendant bit victim on side of her face. D.C. Code 1981, § 22-3204(b). *United States v. Dobyns*, 679 A.2d 487, 1996 D.C. App. LEXIS 134 (1996), writ of certiorari denied by 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060, 1997 U.S. LEXIS 3373, 65 U.S.L.W. 3782 (1997).

In prosecution for carrying pistol without license, possession of unregistered firearm, and unlawful possession of ammunition, there was sufficient proof of operability of defendant's pistol; eyewitness testimony, as well as testimony of police officers that gun was fully loaded with live ammunition when recovered, established operability. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204(a). *Key v. United States*, 587 A.2d 1072, 1991 D.C. App. LEXIS 48 (1991).

Evidence in prosecution for possession of prohibited weapon was sufficient to permit jury to find that sawed-off shotgun allegedly possessed by defendant was "operable." D.C. Code 1981, §§ 22-3201, 22-3214(a), 22-3215a. *Washington v. United States*, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

Circumstantial evidence may support finding of "operability" of shotgun for purposes of statute prohibiting possession of shotgun with barrel less than 20 inches long. D.C. Code 1981, §§ 22-3201, 22-3214(a). *Washington v. United States*, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

Evidence was insufficient to support conviction of carrying a pistol without a license in view of fact that it was necessary for firearms examiner to disassemble the weapon into four parts and work with spring to render the pistol operable, it required expert knowledge to diagnose what was the defect which prevented firing and what was necessary to correct the same, and that defendant lacked such knowledge. *Curtice v. United States*, 488 A.2d 917, 1985 D.C. App. LEXIS 328 (1985).

There was sufficient evidence to support defendant's conviction for carrying pistol without license, even though gun that defendant passed to another person failed to discharge four times inside nightclub and defendant argued that gun that was later used in shooting victim outside nightclub was not same weapon previously used inside, as reasonable jury could have found that weapon defendant handed to person inside club was same weapon used to shoot victim outside. D.C. Code 1981, § 22-3204. *Murchison v. United States*, 486 A.2d 77, 1984 D.C. App. LEXIS 575 (1984).

— Persons liable, weight and sufficiency of evidence.

Evidence was sufficient to convict co-defendant of two counts of second-degree murder and

one count of possession of a firearm during a crime of violence (PFCV) as an aider and abettor, during trial of defendant and co-defendant arising out of the shooting death of two victims that allegedly had been trying to break into co-defendant's car; there was evidence that co-defendant gave defendant a machine gun just prior to the shootings after being informed that two young men were trying to break into his car, co-defendant's cellmate testified that co-defendant confessed that he was in parking lot with defendant when victims were shot, and cell mate testified that co-defendant gave a direct order to shot when one of his companions asked what he wanted them to do. *Coleman v. United States*, 948 A.2d 534, 2008 D.C. App. LEXIS 246 (2008), writ of certiorari denied by 558 U.S. 931, 130 S. Ct. 349, 175 L. Ed. 2d 231, 2009 U.S. LEXIS 6443, 78 U.S.L.W. 3180 (2009).

Evidence was sufficient to support defendant's conviction for assault with dangerous weapon on an aiding and abetting theory; defendant was at scene of crime with his two cohorts and made his escape at the same time, defendant never distanced himself from the crimes and instead demanded to know who had shot at his car as one of his companions threatened to kill everyone on the block, defendant had weapon in view while his two cohorts had their deadly weapons out as they made their threats, and from his actions, it was reasonable to infer that defendant knew about crimes, took some part in confrontation, and facilitated its commission. *Price v. United States*, 813 A.2d 169, 2002 D.C. App. LEXIS 723 (2002).

Evidence supported conviction for possessing a firearm during a crime of violence, either as a principal or as an aider and abettor, where defendant and another were both armed and entered victims' house intending to rob victims, and defendant subsequently shot and killed victims. D.C. Code 1981, § 22-3204(b). *Fisher v. United States*, 749 A.2d 710, 2000 D.C. App. LEXIS 54 (2000), writ of certiorari denied by 531 U.S. 1180, 121 S. Ct. 1159, 148 L. Ed. 2d 1019, 2001 U.S. LEXIS 1634, 69 U.S.L.W. 3555 (2001).

Evidence in prosecution for possession of firearm during commission of crime of violence was sufficient to support finding that defendant aided and abetted in his co-defendants' possession of their guns; evidence showed that he entered and exited victims' apartment with his co-defendants, and that while in apartment he worked in concert with them by, among other things, blocking door, guarding one victim, and pointing knife at another victim. D.C. Code 1981, § 22-3204(b). *Dang v. United States*, 741 A.2d 1039, 1999 D.C. App. LEXIS 281 (1999).

Conviction for carrying a pistol without a license was supported by testimony that defendant took pistol after codefendant shot victim,

placed pistol in his pants pocket, approached victim in manner witnesses perceived to be threatening, and later returned pistol to codefendant. D.C. Code 1981, § 22-3204(a). *Outlaw v. United States*, 632 A.2d 408, 1993 D.C. App. LEXIS 259 (1993), writ of certiorari denied by 510 U.S. 1205, 114 S. Ct. 1326, 127 L. Ed. 2d 674, 1994 U.S. LEXIS 2441, 62 U.S.L.W. 3624 (1994).

There was insufficient evidence to convict defendants of carrying a pistol without a license on aiding and abetting theory, where there was no evidence that third person in actual possession of the pistol did not have a license to carry it. *Jefferson v. United States*, 558 A.2d 298, 1989 D.C. App. LEXIS 69 (1989), writ of certiorari denied by 493 U.S. 1032, 110 S. Ct. 748, 107 L. Ed. 2d 765, 1990 U.S. LEXIS 294, 58 U.S.L.W. 3428 (1990).

Where no evidence was introduced to show that codefendant, or anyone else besides defendant, had no license for gun, and no one else was charged, let alone convicted, of carrying a pistol without a license, there was inconclusive evidence of an unlicensed weapons crime that defendant could be said to have aided and abetted. D.C. Code §§ 22-105, 22-3204. *Jackson v. United States*, 395 A.2d 99, 1978 D.C. App. LEXIS 573 (1978).

— Possession of weapon generally, weight and sufficiency of evidence.

Evidence which was adequate to enable jury to find that the possession of weapons, which were in a car in which defendants were riding, could be knowledgeably attributable to defendants was sufficient to sustain their convictions for possession of unregistered firearms, possession of prohibited weapons and carrying a dangerous weapon. U.S. Const. Amend. 4; 26 U.S.C. (I.R.C.1954) § 5861(d); D.C. Code §§ 22-3204, 22-3214(a). *United States v. Matthews*, 480 F.2d 1191, 1973 U.S. App. LEXIS 9251 (C.A.D.C. 1973).

Evidence was sufficient to support convictions for second-degree murder while armed, possession of a firearm during a crime of violence (PFCV), and carrying a pistol without a license (CPWL), even though defendant argued that the testimony of one witness was too contradictory and unsubstantiated to identify him sufficiently as a shooter; eyewitness testified that she saw defendant and codefendant both shoot in the direction of a car being driven by victim and identified defendant by his appearance and nickname, two officers testified that they saw defendant near the scene after the murder, a defense witness testified that she heard what sounded like two guns, and, *inter alia*, no physical evidence undermined the government's case. *Paige v. United States*, 25 A.3d 74, 2011 D.C. App. LEXIS 438 (2011), writ of certiorari denied by 132 S. Ct. 1605, 182 L. Ed.

2d 212, 2012 U.S. LEXIS 1302, 80 U.S.L.W. 3478 (U.S. 2012).

Evidence was sufficient to show that defendant had constructive possession of gun and ammunition found in vehicle that he had been driving, so as to support convictions for possession of an unregistered firearm (UF), unlawful possession of ammunition (UA), and carrying a pistol without a license (CPWL); gun was located next to where defendant had been sitting and was immediately visible to law enforcement officer when he walked toward driver's side of vehicle. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

Jury could reasonably infer that defendant charged with carrying pistol without a license (CPWL) was in actual possession of pistol and that he secreted it in potato chip box in back of ice cream truck he was driving just as police arrived, based on officer's testimony that officer saw defendant reach his hand into box, then withdraw it and walk away and that officer saw gun in box after defendant returned to front portion of truck. D.C. Code 1981, § 22-3204(a). *White v. United States*, 714 A.2d 115, 1998 D.C. App. LEXIS 113 (1998).

Evidence that defendant was in possession of pistol and that he pointed pistol at police officer was sufficient to support jury verdict that defendant was guilty of possession of firearm during crime of violence (PFCV), even though he was acquitted of assault with dangerous weapon (ADW), the predicate offense for PFCV. D.C. Code 1981, §§ 22-503, 22-3204(b). *Ransom v. United States*, 630 A.2d 170, 1993 D.C. App. LEXIS 221 (1993).

In prosecution, for carrying pistol without license, testimony of police officer that, pursuant to his investigation, he was unable to determine that defendant possessed license, was sufficient to support conviction. D.C. Code 1973, § 22-3204. *Hilton v. United States*, 435 A.2d 383, 1981 D.C. App. LEXIS 358 (1981).

Notwithstanding defendant's claim that Government had failed to prove essential element of possession of gun at time of offense, evidence sustained conviction of carrying a pistol without a license. D.C. Code § 22-3204. *Hawkins v. United States*, 304 A.2d 279, 1973 D.C. App. LEXIS 267 (1973).

Officer's independent testimony with respect to defendant's possession of gun to which no objection was made was sufficient to support defendant's conviction for carrying pistol without a license. D.C. Code §§ 22-3204, 23-306. *Lee v. United States*, 242 A.2d 212, 1968 D.C. App. LEXIS 161 (App. 1968).

Defendant's ownership of vehicle where pistol was found, his operation of that vehicle, and circumstances showing his knowledge that pistol was in the trunk of the vehicle are sufficient to sustain conviction under this section. *United*

States v. Duncan, 115 WLR 2517 (Super. Ct. 1987).

— Robbery offenses, weight and sufficiency of evidence.

Evidence was sufficient to support finding that juvenile was among the individuals who committed the charged armed robbery; positive identifications were made by two victims at a show-up held some twenty-five minutes after the robbery, victim testified that he recognized defendant by his facial features, dreadlock hair style and wristbands, victims professed to have no doubt about their identifications, and victim was robbed of three new and recently-obtained twenty-dollar bills, while defendant was found by police in possession of three new twenty-dollar bills. *In re T.C.*, 999 A.2d 72, 2010 D.C. App. LEXIS 398 (2010).

Evidence was sufficient to show that defendant assaulted victim with intent to rob him, so as to support conviction for assault with intent to commit robbery while armed (AWIRWA) and related conviction for possession of a firearm during a crime of violence or dangerous offense (PFCV); victim dropped personal items while walking, defendant informed victim that he had dropped something, victim retrieved his dropped items, thanked defendant, and continued walking, and defendant uttered, "[W]hat about me?" while drawing a gun. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

Evidence was sufficient to support convictions for armed robbery, second-degree armed burglary, and possession of a firearm during a crime of violence or dangerous offense, even if pretrial photo array identification was suggestive because defendant was the oldest person shown; several eyewitnesses had amply opportunity to observe the perpetrators during the commission of the crimes, and they selected defendant's photo from the array and identified him in court. *Stevenson v. United States*, 760 A.2d 1034, 2000 D.C. App. LEXIS 248 (2000).

Convictions for multiple charges arising out of armed robbery of apartment building were supported by the identification of defendants by victims and police officers, and testimony that the defendants' weapons were operational. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2101, 22-2901, 22-3202, 22-3204(a, b), 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Finding that robbery defendant was armed with "firearm or imitation firearm" was supported by eyewitness testimony; despite witness' lack of familiarity with handguns, she insisted that silver object she saw in defendant's hand was gun. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Bates v. United States*, 619 A.2d 984, 1993 D.C. App. LEXIS 23 (1993).

Convictions of two counts of armed robbery^{*} and one count of possession of firearm during commission of crime of violence or dangerous crime were supported by sufficient evidence, including complaining witness' identification of defendant and identification of defendant's somewhat distinctive car by both witnesses at a second sighting. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b); U.S.C. Const.Amend. 6. *Goins v. United States*, 617 A.2d 956, 1992 D.C. App. LEXIS 307 (1992).

Testimony of robbery victims was sufficient proof that defendant carried a pistol, and, as it was reasonable to assume that pistol directed at victims in a menacing manner was loaded and operable, there was sufficient evidence that pistol involved in armed burglary, robbery and assaults was in fact operable. D.C. Code §§ 22-502, 22-1801, 22-2901, 22-3204. *Morrison v. United States*, 417 A.2d 409, 1980 D.C. App. LEXIS 324 (1980).

Evidence in prosecution wherein defendant was convicted of armed robbery and of carrying pistol without license was sufficient to permit finding of identification beyond reasonable doubt, even considering 18 months time lapse between offense and positive identification of defendant at lineup. D.C. Code §§ 22-2901, 22-3202, 22-3204. *Tolliver v. United States*, 378 A.2d 679, 1977 D.C. App. LEXIS 248 (1977).

— **Unlicensed weapon, weight and sufficiency of evidence.**

Evidence, including fact that searching officer found a pistol on floorboard and between and behind front bucket seats of automobile in which defendant and his companion were riding, was sufficient to sustain conviction of carrying a pistol without a license. D.C. Code § 22-3204. *United States v. McDonald*, 481 F.2d 513, 1973 U.S. App. LEXIS 9280 (C.A.D.C. 1973).

Evidence supported conviction for carrying dangerous weapon without license. D.C. Code 1961, § 22-3204. *Epperson v. United States*, 371 F.2d 956, 1967 U.S. App. LEXIS 7906 (C.A.D.C. 1967).

For purposes of the statute criminalizing the carrying of a pistol without a license, a defendant may be found to have carried a pistol if the pistol was in such proximity as to be convenient of access and within reach. *Howerton v. United States*, 964 A.2d 1282, 2009 D.C. App. LEXIS 32 (2009).

Evidence was sufficient to show that a handgun was in such proximity to defendant as to be convenient of access and within reach, so as to support a conviction for carrying a pistol without a license (CPWL); police officers found the handgun on top of a dresser about 18 feet from where defendant was standing when the officers entered defendant's apartment. *Howerton*

v. United States, 964 A.2d 1282, 2009 D.C. App. LEXIS 32 (2009).

Evidence was sufficient to show that defendant had intent to exercise dominion or control over pistol found in glove compartment of vehicle in which he was a passenger, so as to support conviction for carrying a pistol without a license based on constructive possession; just before police officer asked defendant to exit vehicle after smelling marijuana, defendant was sitting in slouched position in front passenger seat with his knees against glove compartment, piece of tubing was across latch, latch was otherwise in good working condition, and jury could have inferred that defendant elected to hold glove-compartment door shut to conceal pistol. *Smith v. United States*, 899 A.2d 119, 2006 D.C. App. LEXIS 217 (2006).

Evidence of defendants' participation in the larger scheme to murder victim was insufficient to support convictions for carrying a pistol without a license (CPWL) on an aiding and abetting theory. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Evidence was sufficient to sustain conviction for carrying a pistol without a license arising from incident in which defendant, a security guard who did not have license to carry pistol, deviated from traveling to work to threaten complaining witness with gun. D.C. Code 1981, §§ 22-504, 22-3204. *Shivers v. United States*, 533 A.2d 258, 1987 D.C. App. LEXIS 484 (1987).

Evidence was sufficient to sustain conviction of carrying a pistol without a license. D.C. Code 1981, § 22-3204. *Willingham v. United States*, 467 A.2d 742, 1983 D.C. App. LEXIS 510 (1983).

Proof of intent to use weapon for extrinsic unlawful purpose is not required in order to convict person of carrying pistol without a license. D.C. Code § 22-3204. *Logan v. United States*, 402 A.2d 822, 1979 D.C. App. LEXIS 384 (1979).

Evidence was insufficient to sustain conviction for carrying a pistol without a license. D.C. Code § 22-3204. *Outz v. United States*, 306 A.2d 664, 1973 D.C. App. LEXIS 314 (1973).

Evidence including affidavits of records division director that defendant did not have license to carry pistol and evidence that he was not carrying license as required, sustained con-

viction for carrying pistol without license. D.C. Code §§ 22-3204, 33-402. *Durant v. United States*, 292 A.2d 157, 1972 D.C. App. LEXIS 416 (1972), writ of certiorari denied by 409 U.S. 1127, 93 S. Ct. 946, 35 L. Ed. 2d 259, 1973 U.S. LEXIS 3691 (1973).

In absence of objection to testimony of police lieutenant who stated that he had searched pistol license records, and in absence of attempt

to cross-examine him as to extent of his knowledge and familiarity with records or contention that he was not in a position to make a complete search and render accurate report, testimony was of sufficient probative force to show that accused had no license even though official custodian was not produced. D.C. Code 1940, § 23-3204. *Bussie v. U.S.*, 81 A.2d 247, 1951 D.C. App. LEXIS 167 (Cr.App. 1951).

§ 22-4504.01. Authority to carry firearm in certain places and for certain purposes.

Notwithstanding any other law, a person holding a valid registration for a firearm may carry the firearm:

- (1) Within the registrant's home;
- (2) While it is being used for lawful recreational purposes;
- (3) While it is kept at the registrant's place of business; or
- (4) While it is being transported for a lawful purpose as expressly authorized by District or federal statute and in accordance with the requirements of that statute.

(July 8, 1932, 47 Stat. 651, ch. 456, § 4a, as added May 20, 2009, D.C. Law 17-388, § 2(d), 56 DCR 1162.)

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

Editor's notes. — Section 3 of D.C. Law 17-388 provided: "Sec. 3. Savings clause. Nothing in section 2 shall affect any action, proceeding, or prosecution commenced before Septem-

ber 16, 2008. Any such action, proceeding, or prosecution shall continue, or may be enforced, in the same manner and to the same extent as if the amendments made by that section had not been made."

§ 22-4504.02. Lawful transportation of firearms.

(a) Any person who is not otherwise prohibited by the law from transporting, shipping, or receiving a firearm shall be permitted to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry the firearm to any other place where he may lawfully possess and carry the firearm if the firearm is transported in accordance with this section.

(b)(1) If the transportation of the firearm is by a vehicle, the firearm shall be unloaded, and neither the firearm nor any ammunition being transported shall be readily accessible or directly accessible from the passenger compartment of the transporting vehicle.

(2) If the transporting vehicle does not have a compartment separate from the driver's compartment, the firearm or ammunition shall be contained in a locked container other than the glove compartment or console, and the firearm shall be unloaded.

(c) If the transportation of the firearm is in a manner other than in a vehicle, the firearm shall be:

- (1) Unloaded;
- (2) Inside a locked container; and
- (3) Separate from any ammunition.

(July 8, 1932, 47 Stat. 651, ch. 456, § 4b, as added May 20, 2009, D.C. Law 17-388, § 2(d), 56 DCR 1162.)

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

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§ 22-4505. Exceptions to § 22-4504.

(a) The provisions of § 22-4504 shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, including special agents of the Office of Tax and Revenue, authorized in writing by the Deputy Chief Financial Officer for the Office of Tax and Revenue to carry a firearm while engaged in the performance of their official duties, and criminal investigators of the Office of the Inspector General, designated in writing by the Inspector General, while engaged in the performance of their official duties, or to members of the Army, Navy, Air Force, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his or her possession, using, or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol, transported in accordance with § 22-4504.02, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business or in moving goods from one place of abode or business to another.

(b) The provisions of § 22-4504 with respect to pistols shall not apply to a police officer who has retired from the Metropolitan Police Department, if the police officer has registered a pistol and it is concealed on or about the police officer.

(July 8, 1932, 47 Stat. 651, ch. 465, § 5; May 7, 1993, D.C. Law 9-266, § 3, 39 DCR 5676; May 21, 1994, D.C. Law 10-119, § 15(d), 41 DCR 1639; Mar. 26, 1999, D.C. Law 12-190, § 3, 45 DCR 7814; June 9, 2001, D.C. Law 13-305, § 408, 48 DCR 334; June 12, 2003, D.C. Law 14-310, § 9, 50 DCR 1092; May 20, 2009, D.C. Law 17-388, § 2(e), 56 DCR 1162.)

Cross references. — District of Columbia Housing Authority Police Force, applicability of this section, see § 6-258.01.

Prior Codifications. — 1981 Ed., § 22-3205.
1973 Ed., § 22-3205.

Effect of amendments. — D.C. Law 13-305, in subsec. (a), substituted "duly appointed law enforcement officers, including special agents of the Office of Tax and Revenue, authorized in writing by the Deputy Chief Financial Officer for the Office of Tax and Revenue to

carry a firearm while engaged in the performance of their official duties" for "duly appointed law enforcement officers".

D.C. Law 14-310, in par. (4), validated a previously made technical correction.

D.C. Law 17-388, in subsec. (a), substituted "pistol, transported in accordance with § 22-4504.02, from" for "pistol unloaded and in a secure wrapper from".

Temporary Amendment of Section. — Section 3 of D.C. Law 12-177 inserted "including criminal investigators of the Office of the Inspector General, designated in writing by the Inspector General, while engaged in the performance of their official duties" near the beginning of (a).

Emergency legislation. — For temporary amendment of section, see § 3 of the Office of the Inspector General Law Enforcement Powers Emergency Amendment Act of 1998 (D.C. Act 12-394, July 4, 1998, 45 DCR 4645), § 3 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-463, October 28, 1998, 45 DCR 7818), and § 3 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-3, February 8, 1999, 46 DCR 2288).

Legislative history of Law 9-266. — Law 9-266, the "Handgun Possession Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992 it was assigned Act No. 9-247 and transmitted to both Houses of Congress for its review. D.C. Law 9-266 became effective on May 7, 1993.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 12-177. — Law 12-177, the "Office of the Inspector General Law Enforcement Powers Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-676. The Bill was adopted on first and second readings on June 2,

1998, and July 7, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-419 and transmitted to both Houses of Congress for its review. D.C. Law 12-419 became effective on March 26, 1999.

Legislative history of Law 12-190. — Law 12-190, the "Office of the Inspector General Law Enforcement Powers Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-622, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-461 and transmitted to both Houses of Congress for its review. D.C. Law 12-190 became effective on March 26, 1999.

Legislative history of Law 12-177. — Section 5(b) of D.C. Law 12-177 provided that the act shall expire after 225 days of its having taken effect or on the effective date of the Office of the Inspector General Law Enforcement Powers Amendment Act of 1998, whichever occurs first.

Legislative history of Law 13-305. — Law 13-305, the "Tax Clarity Act of 2000", was introduced in Council and assigned Bill No. 13-586, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 2, 2000, and November 8, 2000, respectively. Signed by the Mayor on December 13, 2000, it was assigned Act No. 13-501 and transmitted to both Houses of Congress for its review. D.C. Law 13-305 became effective on June 9, 2001.

Legislative history of Law 14-310. — Law 14-310, the "Criminal Code and Miscellaneous Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

CASE NOTES

ANALYSIS

Dealers in firearms.
Indictment and information.
Instructions.
Justification or excuse.
Persons and occasions exempted, generally.
Presumptions and burden of proof.
Private protection personnel.
Special policemen.

Dealers in firearms.

Carrying pistol without license statute provides exemption for federally licensed dealers in firearms only if dealer is actually engaged in business of dealing in firearms while in possession of pistol. D.C. Code 1981, § 22-3205(a). *Bsharah v. United States*, 646 A.2d 993, 1994 D.C. App. LEXIS 143 (1994).

Defendant charged with carrying pistol for

which he had no license, was not within District of Columbia statute providing that licensing provisions did not apply to persons engaged in business of repairing firearms when pistol is carried unloaded in a secure wrapper from place of business to home, where defendant claimed that repairing guns was only his hobby and that he had volunteered to work on gun which he claimed belonged to another. D.C. Code 1951, §§ 14-305, 22-3205. *Cormier v. U.S.*, 137 A.2d 212, 1957 D.C. App. LEXIS 325 (Cr.App. 1957).

Indictment and information.

Indictment charging defendant with carrying a pistol but failing to charge, as required by statute, that pistol was carried by defendant without a license failed to charge an offense. D.C. Code 1940, §§ 22-3204, 22-3205. *U.S. v. Waters*, 73 F.Supp. 72, 1947 U.S. Dist. LEXIS 2253 (D.D.C.1947).

Instructions.

There was no plain error in charge instructing jury that if it credited defense evidence that defendant, a security guard who did not have license for carrying a gun, went from his house to his car with his gun and then drove straight to work, without threatening complaining witness with gun, defendant could not be found guilty of carrying pistol without a license, but that if jury credited Government's evidence that defendant threatened complaining witness with gun before traveling to work, defendant could be found guilty. D.C. Code 1981, §§ 4-114, 22-3204, 22-3205. *Shivers v. United States*, 533 A.2d 258, 1987 D.C. App. LEXIS 484 (1987).

Justification or excuse.

Defendant's purpose of showing new found pistol to his girl friend did not amount to innocent or momentary possession such as would be a defense to charge of carrying pistol without a license. D.C. Code §§ 22-3204, 22-3205. *Hines v. United States*, 326 A.2d 247, 1974 D.C. App. LEXIS 288 (1974).

In order to assert defense of innocent or momentary possession of pistol as defense to charge of carrying pistol without a license, accused must show not only an absence of criminal purpose, but also that his possession was excused and justified as stemming from an affirmative effort to aid and enhance social policy underlying law enforcement. D.C. Code §§ 22-3204, 22-3205. *Hines v. United States*, 326 A.2d 247, 1974 D.C. App. LEXIS 288 (1974).

Persons and occasions exempted, generally.

Under statutory provision excepting from prohibition against carrying pistols "jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, or to mem-

bers of the Army, Navy, or Marine Corps of United States or of the National Guard or Organized Reserves when on duty," corrections officer was not prohibited from carrying pistol whether or not "on duty." D.C. Code §§ 22-3204, 22-3205. *United States v. Pritchett*, 470 F.2d 455, 1972 U.S. App. LEXIS 6985 (C.A.D.C. 1972).

Defendant, who was a federal protective officer within the general services administration, was not, for purposes of statute prohibiting carrying a pistol without a license, within the exemption which applies to "policemen and other duly appointed law-enforcement officers," where there was no authorization for federal protective service officers to carry firearms other than while on duty or in a travel status to and from duty assignments, while defendant at the time of his arrest was returning from a personal trip to Baltimore totally unrelated to his duties as a federal protective service officer, though, as such officer, he had the same civil service classification as applied to members of the metropolitan police department. D.C. Code §§ 22-3204, 22-3205; 40 U.S.C. §§ 13n, 212a, 318 et seq. *Middleton v. United States*, 305 A.2d 259, 1973 D.C. App. LEXIS 300 (1973).

A defendant was neither a "policeman" nor a "law enforcement officer" so as to be exempt from the statute against carrying a pistol without a license, where defendant was a special policeman appointed by the Commissioners and he was not "on actual duty in the area" of the place where he was arrested nor was he "traveling without deviation immediately before and immediately after the period of actual duty between such places and his residence" within the Commissioner's regulation authorizing the carrying of firearms by special policemen under such circumstances. D.C. Code 1951, §§ 4-115, 22-3204, 22-3205. *McKenzie v. U.S.*, 158 A.2d 912, 1960 D.C. App. LEXIS 181 (Cr.App. 1960).

Special conservator of the peace seeking preliminary injunction to enjoin the District of Columbia from arresting and prosecuting him for violating its firearms laws failed to show that he had substantial likelihood of success on merits of § 1983 claim that the District would violate his Fourth Amendment rights by arresting and prosecuting him for carrying an unregistered firearm in the District, and that he was entitled to carry firearms in the District, under the Law Enforcement Officers Safety Act (LEOSA), as a qualified law enforcement officer and a duly appointed law enforcement officer. *Ord v. District of Columbia*, 417 Fed.Appx. 1, 2011 U.S. App. LEXIS 7017 (C.A.D.C. 2011).

Presumptions and burden of proof.

Under § 22-3205, the exception to carrying pistol without license charge, burden is upon defendant to prove that he qualified for excep-

tion. D.C. Code 1981, §§ 22-3204, 22-3205. *Chapman v. United States*, 493 A.2d 1026, 1985 D.C. App. LEXIS 402 (1985).

In prosecution for carrying a pistol without a license, defendant had burden of bringing himself within statutory exception to offense charged, and government did not have burden of showing, as an element of its proof, that defendant did not come within exception. D.C. Code §§ 22-3204 to 22-3206. *Williams v. United States*, 237 A.2d 539, 1968 D.C. App. LEXIS 122 (App. 1968).

Private protection personnel.

Special policemen are commissioned for special purpose of protecting property on premises of employer and do not have general duties and broad authority of a policeman or law enforcement officer in ordinary sense of those terms. D.C. Code §§ 4-115, 22-3204 to 22-3206. *Franklin v. United States*, 271 A.2d 784, 1970 D.C. App. LEXIS 377 (App. 1970), affirmed by 458 F.2d 861, 148 U.S. App. D.C. 39, 1972 U.S. App. LEXIS 11014 (1972).

Special policemen.

Despite fact that defendant was a special policeman at time of his arrest for carrying a pistol in violation of statute, he did not come within the "policemen or other duly appointed law-enforcement officers" exception to the statute, since a special policeman is not empowered to exercise his authority outside the property or area he is appointed to protect, or to carry weapons away from such area with certain exceptions, and since the factual circumstances in the instant case were not even close to being within those limited exceptions. D.C. Code §§ 4-115, 22-3204, 22-3205. *Franklin v. United States*, 458 F.2d 861, 1972 U.S. App. LEXIS 11014 (C.A.D.C. 1972).

Mindful of the policy underlying the carrying a pistol without a license (CPWL) statute, which is to prevent a person's having a pistol or dangerous weapon so near him or her that he or she could promptly use it, if prompted to do so by any violent motive, courts focus on whether

the location of the pistol presented an obstacle such as to deny defendant convenient access to the weapon or place it beyond his reach. *Jones v. United States*, 972 A.2d 821, 2009 D.C. App. LEXIS 183 (2009).

Special police officer, such as defendant, who had been commissioned pursuant to certain statute, will be considered policeman or law enforcement officer within meaning of statute providing that policemen or other duly appointed law enforcement officers do not need license to carry pistol, only to extent that he acted in conformity with regulations governing special officers. D.C. Code §§ 4-115, 22-3204, 22-3205. *Timus v. United States*, 406 A.2d 1269, 1979 D.C. App. LEXIS 450 (1979).

At time of his arrest, defendant, a special police officer, was not on duty or in area of property to which he was assigned, at which there was no place for him to store his weapon or ammunition, and thus he would be permitted to carry his pistol without license only if he were traveling, without deviation, immediately after his period of active duty, between such area and his residence, but he was not doing so, where he was stopped and found with pistol two and one-half hours after end of his shift on Saturday when he would not encounter rush hour traffic. D.C. Code §§ 4-115, 22-3204, 22-3205. *Timus v. United States*, 406 A.2d 1269, 1979 D.C. App. LEXIS 450 (1979).

Where defendant, although in uniform, was not due to report for duty as special policeman for six hours and was not traveling without deviation, immediately before or immediately after period of actual duty, between area where he worked and his residence, he was not "policeman" nor "law enforcement officer" within provision exempting policemen or law enforcement officers from statute proscribing carrying pistol either openly or concealed without a license. D.C. Code §§ 4-115, 22-3204 to 22-3206. *Franklin v. United States*, 271 A.2d 784, 1970 D.C. App. LEXIS 377 (App. 1970), affirmed by 458 F.2d 861, 148 U.S. App. D.C. 39, 1972 U.S. App. LEXIS 11014 (1972).

§ 22-4506. Issue of licenses to carry pistol. [Repealed].

Repealed.

(July 8, 1932, 47 Stat. 651, ch. 465, § 6; May 21, 1994, D.C. Law 10-119, § 15(e), 41 DCR 1639; May 20, 2009, D.C. Law 17-388, § 2(f), 56 DCR 1162.)

Prior Codifications. — 1981 Ed., § 22-3206.

1973 Ed., § 22-3206.

Emergency legislation. — For temporary (90 day) repeal, see § 2(f) of Inoperable Pistol Emergency Amendment Act of 2008 (D.C. Act

17-652, January 6, 2009, 56 DCR 927).

For temporary (90 day) repeal, see § 2(f) of Inoperable Pistol Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-24, March 16, 2009, 56 DCR 2309).

Legislative history of Law 10-119. — For

legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 22-4507. Certain sales of pistols prohibited.

No person shall within the District of Columbia sell any pistol to a person who he or she has reasonable cause to believe is not of sound mind, or is forbidden by § 22-4503 to possess a pistol [now “firearm”], or, except when the relation of parent and child or guardian and ward exists, is under the age of 21 years.

(July 8, 1932, 47 Stat. 652, ch. 465, § 7; June 29, 1953, 67 Stat. 94, ch. 159, § 204(d); May 21, 1994, D.C. Law 10-119, § 15(f), 41 DCR 1639.)

Prior Codifications. — 1981 Ed., § 22-3207.

1973 Ed., § 22-3207.

Legislative history of Law 10-119. — For

legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

CASE NOTES

In general.

Judicial decision rendered in 1968 defining words “not insane” in Sexual Psychopath Act as meaning “not mentally ill” would not be retroactively applied to challenge petitioner’s 1958 commitment to hospital as a sexual psychopath

where petitioner had been released and there was no issue of continuing confinement. 18 U.S.C. § 1865(b)(4); Code Va.1950, § 46.1-360; D.C. Code §§ 22-3207, 22-3210, subd. 3(a). *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

§ 22-4508. Transfers of firearms regulated.

No seller shall within the District of Columbia deliver a firearm to the purchaser thereof until 10 days shall have elapsed from the time of the application for the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law enforcement officers, and, when delivered, said firearm shall be transported in accordance with § 22-4504.02. At the time of applying for the purchase of a firearm the purchaser shall sign in duplicate and deliver to the seller a statement containing his or her full name, address, occupation, color, place of birth, the date and hour of application, the caliber, make, model, and manufacturer’s number of the firearm to be purchased and a statement that the purchaser is not forbidden by § 22-4503 to possess a firearm. The seller shall, within 6 hours after such application, sign and attach his or her address and deliver 1 copy to such person or persons as the Chief of Police of the

District of Columbia may designate, and shall retain the other copy for 6 years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in § 22-4514 as entitled to possess the same, and then only after permission to make such sale has been obtained from the Chief of Police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers.

(July 8, 1932, 47 Stat. 652, ch. 465, § 8; June 29, 1953, 67 Stat. 94, ch. 159, § 204(e); May 21, 1994, D.C. Law 10-119, § 15(g), 41 DCR 1639; May 20, 2009, D.C. Law 17-388, § 2(g), 56 DCR 1162.)

Prior Codifications. — 1981 Ed., § 22-3208.

1973 Ed., § 22-3208.

Effect of amendments. — D.C. Law 17-388 substituted “firearm” for “pistol”; substituted “10 days” for “48 hours”; and substituted “shall be transported in accordance with § 22-4504.02” for “shall be securely wrapped and shall be unloaded”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(g) of Inoperable Pistol Emergency Amendment Act of 2008 (D.C. Act 17-652, January 6, 2009, 56 DCR 927).

For temporary (90 day) amendment of section, see § 2(g) of Inoperable Pistol Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-24, March 16, 2009, 56 DCR 2309).

For temporary (90 day) amendment of sec-

tion, see § 2 of Transfer Emergency Amendment Act of 2011 (D.C. Act 19-69, May 13, 2011, 58 DCR 4256).

For temporary (90 day) amendment of section, see § 3(f) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 3(f) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

§ 22-4509. Dealers of weapons to be licensed.

No retail dealer shall within the District of Columbia sell or expose for sale or have in his or her possession with intent to sell, any pistol, machine gun, sawed-off shotgun, or blackjack without being licensed as provided in § 22-4510. No wholesale dealer shall, within the District of Columbia, sell, or have in his or her possession with intent to sell, to any person other than a licensed dealer, any pistol, machine gun, sawed-off shotgun, or blackjack.

(July 8, 1932, 47 Stat. 652, ch. 465, § 9; May 21, 1994, D.C. Law 10-119, § 15(h), 41 DCR 1639.)

Section references. — This section is referred to in § 22-4510.

Prior Codifications. — 1981 Ed., § 22-3209.

1973 Ed., § 22-3209.

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

§ 22-4510. Licenses of weapons dealers; records; by whom granted; conditions.

(a) The Mayor of the District of Columbia may, in his or her discretion, grant licenses and may prescribe the form thereof, effective for not more than 1 year from date of issue, permitting the licensee to sell pistols, machine guns,

sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in § 22-4509, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this chapter:

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

(3) No pistol shall be sold: (A) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by § 22-4503 to possess a pistol [now “firearm”] or is under the age of 21 years; and (B) unless the purchaser is personally known to the seller or shall present clear evidence of his or her identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in § 22-4514 as entitled to possess the same, and then only after permission to make such sale has been obtained from the Chief of Police of the District of Columbia.

(4) A true record shall be made in a book kept for the purpose, the form of which may be prescribed by the Mayor, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer’s number of the weapon, to which shall be added, when sold, the date of sale.

(5) A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Mayor of the District of Columbia and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model, and manufacturer’s number of the weapon, and a statement by the purchaser that the purchaser is not forbidden by § 22-4503 to possess a pistol [now “firearm”]. One copy of said record shall, within 7 days, be forwarded by mail to the Chief of Police of the District of Columbia and the other copy retained by the seller for 6 years.

(6) No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section.

(b) Any license issued pursuant to this section shall be issued by the Metropolitan Police Department as a Public Safety endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47 of the District of Columbia Official Code [§ 47-2851.01 et seq.].

(July 8, 1932, 47 Stat. 652, ch. 465, § 10; June 29, 1953, 67 Stat. 94, ch. 159, § 204(f), (g); May 21, 1994, D.C. Law 10-119, § 15(i), 41 DCR 1639; Apr. 20, 1999, D.C. Law 12-261, § 2003(p), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(p), 50 DCR 6913.)

Section references. — This section is referred to in §§ 22-4503, 22-4509 and 22-4514.

Prior Codifications. — 1981 Ed., § 22-3210.

1973 Ed., § 22-3210.

Effect of amendments. — D.C. Law 15-38, in subsec. (b), substituted “Public Safety endorsement to a basic business license under the basic” for “Class A Public Safety endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(p) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — Law 15-38, the “Streamlining Regulation Act of

2003,” was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 22-4511. False information in purchase of weapons prohibited.

No person shall, in purchasing a pistol or in applying for a license to carry the same, or in purchasing a machine gun, sawed-off shotgun, or blackjack within the District of Columbia, give false information or offer false evidence of his or her identity.

(July 8, 1932, 47 Stat. 653, ch. 465, § 11; May 21, 1994, D.C. Law 10-119, § 15(j), 41 DCR 1639.)

Prior Codifications. — 1981 Ed., § 22-3211.

1973 Ed., § 22-3211.

Legislative history of Law 10-119. — For

legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

§ 22-4512. Alteration of identifying marks of weapons prohibited.

No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer’s number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be

prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia; provided, however, that nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work.

(July 8, 1932, 47 Stat. 653, ch. 465, § 12.)

Prior Codifications. — 1981 Ed., § 22-3212. 1973 Ed., § 22-3212.

CASE NOTES

ANALYSIS

Examination of witnesses.
Harmless or reversible error.
Presumptions and burden of proof.
Searches and seizures.
Validity.

Examination of witnesses.

In prosecution which resulted in conviction of two defendants for felony-murder, two counts of armed robbery, assault with intent to kill while armed, and other lesser crimes, trial court did not abuse its discretion by restricting cross-examination of surviving victim, which was intended to show that victim had won money in gambling activities from a number of persons other than defendants and that these other persons may have had a motive to rob victims, since questioning had little bearing on credibility of victim's identification of defendants and trial court in fact gave defense counsel considerable leeway to explore collateral issue of surviving victim's gambling activities before restricting such questioning. D.C. Code 1973, §§ 22-3204, 22-3212. *Ruth v. United States*, 438 A.2d 1256, 1981 D.C. App. LEXIS 395 (1981).

Harmless or reversible error.

Although prosecutor should have dismissed charge for alteration of identifying marks on a pistol before trial, defendant who was also charged with carrying a pistol without a license, unlawful possession of ammunition, and possession of a prohibited weapon, was not prejudiced by presence of alteration count in his indictment, where evidence on that count

was minimal and jury's verdict on the three remaining counts was supported by separate and distinct evidence. D.C. Code 1981, §§ 6-2361, 22-3204, 22-3212, 22-3214(a). *Tillman v. United States*, 487 A.2d 1152, 1985 D.C. App. LEXIS 301 (1985).

Presumptions and burden of proof.

There are instances in which government may take advantage of statutory inference as to element of offense, but such inferences must be closely scrutinized to determine if they are constitutionally permissible. D.C. Code 1981, § 22-3212. *Reid v. United States*, 466 A.2d 433, 1983 D.C. App. LEXIS 479 (1983).

Searches and seizures.

Where officer was lawfully arresting car's occupants when he saw gun in plain view on empty seat, he was justified in seizing gun and occupant was not entitled to have it suppressed, in prosecution for carrying pistol without license receiving stolen government property and altering identification marks on weapon. D.C. Code §§ 22-2207, 22-3204, 22-3212; U.S. Const. Amend. 4. *Crawford v. United States*, 369 A.2d 595, 1977 D.C. App. LEXIS 424 (1977).

Validity.

Statute allowing jury to infer, from mere possession of weapon, that identifying marks were altered by the person in possession was unconstitutional in allowing for inference which would be irrational or arbitrary and thus impermissible. D.C. Code 1981, § 22-3212. *Reid v. United States*, 466 A.2d 433, 1983 D.C. App. LEXIS 479 (1983).

§ 22-4513. Exceptions.

Except as provided in § 22-4502, § 22-4504(b), and § 22-4514(b), this chapter shall not apply to toy or antique pistols unsuitable for use as firearms.

(July 8, 1932, 47 Stat. 653, Ch. 465, § 13; July 29, 1970, 84 Stat. 601, Pub. L. 91-358, title II, § 205(b); May 20, 2009, D.C. Law 17-388, § 2(h), 56 DCR 1162.)

Prior Codifications. — 1981 Ed., § 22-3213.

1973 Ed., § 22-3213.

Effect of amendments. — D.C. Law 17-388 substituted “§ 22-4502, § 22-4504(b), and § 22-4514(b)” for “§ 22-4502 and § 22-4514(b)”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(h) of

Inoperable Pistol Emergency Amendment Act of 2008 (D.C. Act 17-652, January 6, 2009, 56 DCR 927).

For temporary (90 day) amendment of section, see § 2(h) of Inoperable Pistol Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-24, March 16, 2009, 56 DCR 2309).

Legislative history of Law 17-388. — For Law 17-388, see notes following § 22-4501.

CASE NOTES

ANALYSIS

Imitation firearms.

In general.

Inoperable firearms.

Presumptions and burden of proof.

Imitation firearms.

Person who uses imitation firearm to frighten others will not be subject to prosecution for carrying dangerous weapon when that person does not attempt to coerce those people to cooperate in some other criminal act. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Imitation firearm does not constitute “dangerous weapon,” within meaning of statute prohibiting the carrying of “dangerous weapon.” D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

In general.

Use of otherwise harmless object in self-defense does not constitute violation of any statutory weapons provisions. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Inoperable firearms.

Inoperable air pistol did not constitute “dangerous weapon,” within meaning of statute prohibiting the carrying of “dangerous weapon,” where pistol was not inherently dangerous due

to its inoperability, and defendant did not use it in manner which rendered it so. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Conviction for carrying a dangerous weapon could not be affirmed based on speculation that, if attacked, defendant might use his inoperable air pistol to strike someone in self-defense, even though defendant allegedly stated that he might defend himself in that way. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Mere fact that defendant’s inoperable air pistol looked like “.357 magnum” handgun, and that defendant carried it in manner intended to frighten others, did not show that pistol was “dangerous weapon,” within meaning of statute prohibiting the carrying of “dangerous weapon.” D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Pistol must be operable to support conviction for carrying pistol without license. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Presumptions and burden of proof.

To support conviction for carrying dangerous weapon, Government must show that defendant carried in open or concealed manner a dangerous weapon, intended to do acts constituting carrying the weapon, and intended to use object as dangerous weapon. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

§ 22-4514. Possession of certain dangerous weapons prohibited; exceptions.

(a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, knuckles, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, sand club, sandbag, switchblade knife, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms; provided, however, that machine guns, or sawed-off shotgun, knuckles, and blackjacks may be possessed by the members of the Army, Navy, Air Force, or Marine Corps of the United States, the National Guard, or

Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law enforcement officers, including any designated civilian employee of the Metropolitan Police Department, or officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under § 22-4510.

(b) No person shall within the District of Columbia possess, with intent to use unlawfully against another, an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than 3 inches, or other dangerous weapon.

(c) Whoever violates this section shall be punished as provided in § 22-4515 unless the violation occurs after such person has been convicted in the District of Columbia of a violation of this section, or of a felony, either in the District of Columbia or in another jurisdiction, in which case such person shall be imprisoned for not more than 10 years.

(July 8, 1932, 47 Stat. 654, ch. 465, § 14; June 29, 1953, 67 Stat. 94, ch. 159, § 204(h); May 21, 1994, D.C. Law 10-119, § 15(k), 41 DCR 1639; June 12, 1999, D.C. Law 12-284, § 6, 46 DCR 1328; May 15, 2009, D.C. Law 17-390, § 3(b), 55 DCR 11030.)

Cross references. — Dangerous weapon defined, public buildings and grounds, see § 10-503.26.

Section references. — This section is referred to in §§ 10-503.26, 22-4508, 22-4510 and 22-4512.

Prior Codifications. — 1981 Ed., § 22-3214.

1973 Ed., § 22-3214.

Effect of amendments. — D.C. Law 17-390, in subsec. (a), substituted “sawed-off shotgun, knuckles,” for “sawed-off shotgun”, and deleted “or metal knuckles,” following “switchblade knife.”

Temporary Amendment of Section. — Section 6 of D.C. Law 12-282 inserted “including any designated civilian employee of the Metropolitan Police Department” in (a).

Section 13(b) of D.C. Law 12-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 6 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 6 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 6 of the Metropolitan Police Department Civilianization Congressional Review Emer-

gency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 12-282. — Law 12-282, the “Metropolitan Police Department Civilianization Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-709. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-282 became effective on May 28, 1999.

Legislative history of Law 12-284. — Law 12-284, the “Metropolitan Police Department Civilianization Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-710, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-284 became effective on June 12, 1999.

Legislative history of Law 17-390. — For Law 17-390, see notes following § 22-3312.02.

References in text. — The Post Office Department, referred to in the proviso in subsection (a) of this section, was abolished and all its

functions, powers, and duties were transferred to the United States Postal Service by § 4(a) of the Act of August 12, 1970, 84 Stat. 773, Pub.

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Adequacy of representation.

Accused, who was convicted of armed robbery, assault with a dangerous weapon, assault on police officer and possession of prohibited weapon and who asserted that there had been inadequate preparation by his trial counsel, was not denied his right to effective assistance of counsel, absent any indication of any substantial defense which accused might have advanced and which was excluded as result of such alleged lack of preparation. D.C. Code §§ 22-502, 22-505(a), 22-2901, 22-3202, 22-3214(a); U.S. Const. Amend. 6. *White v. United States*, 358 A.2d 645, 1976 D.C. App. LEXIS 279 (1976).

Failure to preserve, for appeal, the issue whether trial court erred in allowing in-court identifications of accused, who were convicted of armed robbery, assault with a dangerous

weapon, assault on police officer and possession of prohibited weapon, did not deny effective assistance of counsel where sole ground advanced for suppression of in-court identifications was the failure of government to conduct pretrial lineups and there was no indication that on-scene confrontations between accused and government witnesses were tainted by any impermissible police procedure. D.C. Code §§ 22-502, 22-505(a), 22-2901, 22-3202, 22-3214(a); U.S. Const. Amends. 5, 6; D.C. Code SCR, Criminal Rule 12(b)(3). *White v. United States*, 358 A.2d 645, 1976 D.C. App. LEXIS 279 (1976).

Admissibility of evidence.

Officer's testimony that he was present when sawed-off shotgun taken from juvenile was test-fired and found to be operable and when gun's barrel was measured and found to be less than 20 inches was not "hearsay," and thus, testimony could be used in determining that juvenile was guilty of possessing prohibited weapon. D.C. Code 1981, § 22-3214(a). In re D.S., 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

Even assuming that there was break in chain of custody with respect to sawed-off shotgun admitted into evidence in connection with charge that juvenile possessed prohibited weapon, evidence of break in chain of custody only affected weight to be given to evidence. D.C. Code 1981, § 22-3214(a). In re D.S., 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

Fact that defendant was wearing bullet-proof vest when arrested, combined with testimony that officers saw defendant with a gun, defendant's flight through alley, and location of gun in defendant's path of flight, was relevant to whether defendant also possessed machine gun. D.C. Code 1981, §§ 6-2311(a), 22-3204(a), 22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

Probative value of evidence of bullet-proof vest that defendant was wearing when arrested following chase through alley outweighed any danger that it would improperly sway jury's deliberations, and thus, evidence of vest was admissible in prosecution for various weapons-related offenses including possession of prohibited weapon. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3204(a), 22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

Government could not overcome objection that introduction of description and photograph

of sawed-off shotgun in murder trial was evidence of other crimes, on grounds that gun possession was legal in some circumstances; possession of sawed-off shotgun was crime under any circumstances. D.C. Code 1981, § 22-3214(a). *Ali v. United States*, 581 A.2d 368, 1990 D.C. App. LEXIS 261 (1990), writ of certiorari denied by 502 U.S. 893, 112 S. Ct. 259, 116 L. Ed. 2d 213, 1991 U.S. LEXIS 5645, 60 U.S.L.W. 3265 (1991).

In prosecution for possession of prohibited weapon with intent to use it unlawfully against another, whether defendant offered evidence of threats for its effect on her own state of mind or for inference that victim acted in accordance with expressed hostile intentions toward defendant, that evidence was relevant to defense of self-defense and not excludable on hearsay grounds. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

Record was insufficient to establish whether trial court's error in excluding evidence of threats against defendant in prosecution for possession of prohibited weapon with intent to use it unlawfully against another was harmless or prejudicial. D.C. Code 1972, § 22-3214(b); Criminal Rule 51. *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

For purposes of prosecution for possession of prohibited weapon with intent to use it unlawfully against another, evidence tending to prove that defendant had weapon for permissible purpose would tend to negate government's evidence of unlawful intent, and threats communicated to defendant could be relevant by illuminating defendant's state of mind during period weapon was carried. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

In prosecution for possession of prohibited weapon with intent to use it unlawfully against another wherein defendant claimed that she had seized weapon for use in defending herself, as to period of fight when defendant used or attempted to use weapon against victim and made claim of self-defense, both communicated and uncommunicated threats to defendant became relevant to negate prosecution's effort to prove unlawful intent. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

In prosecution for possession of prohibited weapon with intent to use it unlawfully against another, defendant may offer evidence of communicated threats in order to show her state of mind during different, relevant time periods to establish that defendant lacked intent at time of possession to use weapon unlawfully. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

In prosecution for possession of prohibited weapon with intent to use it unlawfully against another wherein defendant raised defense of self-defense, trial court erred in excluding evidence of uncommunicated threats against defendant by complaining witness, since that evidence was relevant to issue of whether complaining witness was the aggressor. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

In prosecution for possession of prohibited weapon with intent to use it unlawfully against another, trial court erred in excluding testimony about communicated and uncommunicated threats against defendant by third persons where that evidence was relevant to question of whether victim, rather than defendant, more than likely started fight in question. D.C. Code 1973, § 22-3214(b). *McBride v. United States*, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

Trial court, in prosecution for possession of sawed-off shotgun, did not err or abuse discretion in determining that proffered testimony of defendant regarding circumstances of his possession of shotgun would be irrelevant and inadmissible to prove innocent possession of prohibited weapon, in that evidence did not show that defendant had found prohibited weapon recently, and testimony did not establish that defendant intended to deliver gun to law enforcement officials at time he was apprehended. D.C. Code §§ 22-3204, 22-3214(a). *Worthy v. United States*, 420 A.2d 1216, 1980 D.C. App. LEXIS 379 (1980).

In prosecution for carrying a dangerous weapon and possession of a prohibited weapon, trial court did not err in excluding defendant's medical records, which he sought to introduce in support of his claim of self-defense, in that defendant had testified, without contradiction, that he suffered from a bad back and had received instructions from a doctor to avoid straining it, and any additional evidence would have been merely cumulative. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, exclusion of psychology professor's proffered testimony including testimony that "eye-witness [sic] identification is. . . not as simple as it is assumed to be. . .," that scientific literature supported conclusion that one under stress does not make as good an observation as one not under stress, that once a person publicly announced an opinion, he would be motivated to maintain it and that suggestions from a person in authority could have a considerable effect on identification process was not an abuse of discretion. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376

A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, detective's testimony that *modus operandi* was "where we keep pictures of men that have committed different types of crimes. . . like rape, robbery, so on" did not require new trial on ground that it was evidence of another crime committed by accused, in view of the relatively attenuated connection made by detective's testimony between accused's photograph and the *modus operandi* file and in view of instruction that the reference to *modus operandi* was not to be considered as an indication that accused had any record of previous crimes. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, evidence sufficiently established that complainant had an independent source of identification based on his observation of accused during the robbery and, thus, that an allegedly impermissibly suggestive photographic array did not taint his subsequent identification of accused. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, finding that only one photographic array was shown to complainant was not clearly erroneous. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

Evidence, including testimony of police officer, was sufficient to support trial judge's finding that defendant charged with assault and possession of prohibited weapon knowingly and intelligently waived his constitutional rights, despite fact that police officer failed to secure defendant's signature on standard police form which acknowledged that arrestee understood his rights and chose to waive them. D.C. Code §§ 22-505, 22-3214(b). *Walden v. United States*, 351 A.2d 515, 1976 D.C. App. LEXIS 470 (1976).

Arrest.

Police officer who saw parked automobile bearing temporary District of Columbia tags

and a Virginia inspection sticker was authorized to make initial inquiry about ownership of automobile and, in course thereof, to make arrest for illegal possession of blackjack which he saw on floor of automobile. D.C. Code 1961, §§ 22-3214(a), 23-306(a, b). *Jefferson v. United States*, 349 F.2d 714, 1965 U.S. App. LEXIS 4957 (C.A.D.C. 1965).

Where arresting officer had probable cause to believe that defendant was, in officer's presence, committing misdemeanor for which he could serve time in jail, arrest for that misdemeanor was not pretextual, and evidence obtained as result of that arrest was not required to be suppressed in prosecution for unlawful possession of prohibited weapon. D.C. Code 1981, § 22-3214(a). *Alvarez v. United States*, 576 A.2d 713, 1990 D.C. App. LEXIS 138 (1990), writ of certiorari denied by 498 U.S. 875, 111 S. Ct. 203, 112 L. Ed. 2d 164, 1990 U.S. LEXIS 4604, 59 U.S.L.W. 3249 (1990).

Police officers who had probable cause to arrest accused at about 10:15 p. m., following fellow apartment dweller's accusation that accused had pointed a gun at him and threatened to kill him, were not required to obtain an arrest warrant for the accused in light of the exigent nature of the circumstances. D.C. Code §§ 22-504, 22-3214(b); U.S. Const. Amend. 4. *United States v. Simpson*, 330 A.2d 756, 1975 D.C. App. LEXIS 305 (1975).

Police officer who had interviewed alleged assault victim and concluded that his complaint, to the effect that accused had pointed a gun at him and threatened to kill him, was genuine, had probable cause to believe that an armed assault had taken place and that accused had committed it, and had probable cause to arrest accused. D.C. Code §§ 22-504, 22-3214(b). *United States v. Simpson*, 330 A.2d 756, 1975 D.C. App. LEXIS 305 (1975).

Police, who had learned of armed assault committed by accused, and who, before entering accused's apartment, heard close of squeaky door, were entitled to make an arrest and effect a limited search for weapons incident thereto and for their own safety, and .38 revolver found in stove which was readily accessible to the three people in the room was admissible against the accused, subsequently identified by the victim, even though the accused was a functional cripple and was not arrested until the pistol had been seized. D.C. Code §§ 22-504, 22-3214(b); U.S. Const. Amend. 4. *United States v. Simpson*, 330 A.2d 756, 1975 D.C. App. LEXIS 305 (1975).

Where police officers had received complaint that accused, who lived in the same apartment building as the complainant, had pointed a gun at him and threatened to kill him and where, upon knocking on accused's apartment door, accused answered the door, the entry of the police was permissible under the circum-

stances, even though not consented to. D.C. Code §§ 22-504, 22-3214(b); U.S. Const. Amend. 4. *United States v. Simpson*, 330 A.2d 756, 1975 D.C. App. LEXIS 305 (1975).

Conduct of trial.

Atmosphere created in proceeding, in which accused was convicted of armed robbery and possession of a prohibited weapon and in which remarks, better left unsaid, were made, was not such as to deny accused a fair trial or prejudice the defense so as to require a new trial. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

Where judge hearing case without jury had opportunity visually to inspect knife, which was included in record, and it appeared that blade exceeded requisite length by fraction of inch, denying defense the opportunity to demonstrate in court by measuring instrument that blade was not beyond requisite length was not error even if cutting edge of blade measured less than requisite length. D.C. Code §§ 22-504, 22-3214(b). *McIntyre v. United States*, 283 A.2d 814, 1971 D.C. App. LEXIS 241 (1971).

Construction and application.

Telephone cord used by defendant to whip her naked children was not "dangerous weapon" within meaning of statute criminalizing attempted possession of a prohibited weapon (APPW); there was no evidence that telephone cord, even when used to administer vicious whippings to naked children, created substantial risk of death or unconsciousness, and, while children's injuries were not "mere bruises," they could not reasonably be characterized as falling within usual definition of "great bodily injury." *Alfaro v. United States*, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

Government is not required to bring all knife cases under code section prohibiting possession of knife with blade longer than three inches; and defendant who carried openly or concealed on or about his person a "pocket knife" which had a black outer case and a blade three-eighths of an inch wide and four and one-quarter inches from shank to tip was properly prosecuted under code section forbidding any person to carry either openly or concealed on or about his person a deadly or dangerous weapon capable of being so concealed. D.C. Code 1951, §§ 22-3204, 22-3214 and subd. (b). *Degree v. U.S.*, 144 A.2d 547, 1958 D.C. App. LEXIS 265 (Cr.App. 1958).

Double jeopardy.

Convictions for possession of a prohibited weapon with the intent to use it unlawfully (PPW) and possession of a firearm during the

commission of a crime of violence (PFCV) did not violate double jeopardy, as each crime required proof of an element that the other did not. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

Defendant's conviction of assault and of possession of prohibited weapon, both offenses arising out of same incident, did not result in double jeopardy, since each offense demanded proof of essential element not needed in other. D.C. Code §§ 22-505, 22-3214(b). *Walden v. United States*, 351 A.2d 515, 1976 D.C. App. LEXIS 470 (1976).

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosequere it and bring new charge of carrying a pistol without a license, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. D.C. Code §§ 22-3203, 22-3204, 22-3214. *Newman v. United States*, 239 A.2d 152, 1968 D.C. App. LEXIS 134 (App. 1968).

Examination of witnesses.

Decision, rendered after hearing on admissibility that 1959 conviction of one defendant for housebreaking and larceny and 1962 conviction of another defendant for attempted housebreaking could be brought out on cross-examination in robbery prosecution unless either defendant could satisfy court that since conviction he had led legally blameless life was not abuse of discretion. D.C. Code §§ 14-305, 22-502, 22-2901, 22-3214(a); U.S. Const. Amendments 5, 6, 14. *United States v. Bailey*, 426 F.2d 1236, 1970 U.S. App. LEXIS 10227 (C.A.D.C. 1970).

A jury verdict of guilty on charge of possession of a prohibited weapon was not a "conviction" that could be used to impeach defendant, even though all posttrial motions had been denied and only formality of sentencing remained to be done. D.C. Code 1981, §§ 14-305, 22-3214(b). *Franklin v. United States*, 555 A.2d 1010, 1989 D.C. App. LEXIS 42 (1989).

In prosecution for carrying a dangerous weapon and possession of prohibited weapon, trial court correctly disallowed cross-examination of prosecution witness regarding her hospitalization several years earlier, in that such issue was not relevant to her testimony. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

In prosecution for carrying a dangerous weapon and possession of a prohibited weapon, there was no error in trial court's refusal to permit additional inquiry into complainant's

drug habits in the months before and after the incident in question. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

Where defendant, charged with possession of prohibited weapon and with assault with a dangerous weapon, called as a character witness his employer who testified that defendant had a good reputation in the community of keeping the peace and good order, cross-examination of employer as to whether he had heard that defendant had been convicted of the crime of false pretenses was proper. D.C. Code §§ 22-502, 22-3214(b). *Darden v. United States*, 342 A.2d 24, 1975 D.C. App. LEXIS 417 (1975).

The trial court's refusal to allow defendant to cross-examine eyewitness as to witness's possible bias against defendant violated defendant's Confrontation Clause rights; defendant's proffer was sufficient to establish a reasoned suspicion of bias, given that defendant, witness, and witness's son were all involved in a shooting incident in which defendant was the target, defendant was running away from the shooter, the shooter shot witness's son and wounded him, and defendant never testified against the shooter of witness's son, and the entire case against defendant was based on the testimony of witness. *Blades v. United States*, 25 A.3d 39, 2011 D.C. App. LEXIS 375 (2011).

Harmless or reversible error.

Any error in trial court's admission, in prosecution for weapons possession offenses, of testimony concerning defendant's silence in face of questions from driver of car as to where gun found beside defendant in back seat of car had come from did not rise to level of plain error, where it was not obvious that danger of unfair prejudice substantially outweighed probative value of testimony at issue, testimony did not exaggerate probative value of defendant's silence, driver's question to defendant was not explicitly accusatory, defendant presented no evidence, and other evidence against defendant was strong. *Comfort v. United States*, 947 A.2d 1181, 2008 D.C. App. LEXIS 236 (2008).

Jury's inconsistent verdict of acquitting defendant of possession of a prohibited dangerous weapon charge while convicting defendant of aggravated assault while armed charge did not warrant reversal, since sufficient evidence was presented at trial for a reasonable jury to find defendant guilty of aggravated assault while armed. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

Even if prosecutor's closing argument in response to defendant's attacks on victim's credibility had constituted misconduct, defendant nevertheless would not have been entitled to reversal of his convictions for assault with a dangerous weapon and possession of a prohibited weapon, as prosecutor's closing argument

was not a particularly egregious situation resulting in clear miscarriage of justice. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Assuming, arguendo, that trial court erred in admitting evidence of bullet-proof vest that defendant was wearing when arrested, error was harmless, given strength of Government's case, in prosecution for various weapons-related offenses including possession of prohibited weapon; two police officers testified to seeing defendant in possession of a machine-gun type weapon, defendant fled from approaching police cruiser, police found weapon that looked like machine gun in path of defendant's flight soon after his arrest, and lack of moisture on top-side of weapon indicated it had been recently discarded. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3204(a), 22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

Prosecutor's "knights of the round table" analogy in closing argument, when viewed in context, was tied sufficiently to discussion of evidence and did not rise to level of transgression warranting reversal of convictions for various weapons-related offenses including possession of prohibited weapon. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3204(a), 22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

Trial judge's error in allowing impeachment of defendant by a guilty verdict on previous charge of possession of a prohibited weapon required reversal; Government's evidence on present charges, including charge of possession of a prohibited weapon, was not overwhelming, defendant's credibility was central to case, and mitigation measures were insufficient to overcome prejudice. D.C. Code 1981, § 22-3214(b). *Franklin v. United States*, 555 A.2d 1010, 1989 D.C. App. LEXIS 42 (1989).

Although prosecutor should have dismissed charge for alteration of identifying marks on a pistol before trial, defendant who was also charged with carrying a pistol without a license, unlawful possession of ammunition, and possession of a prohibited weapon, was not prejudiced by presence of alteration count in his indictment, where evidence on that count was minimal and jury's verdict on the three remaining counts was supported by separate and distinct evidence. D.C. Code 1981, §§ 6-2361, 22-3204, 22-3212, 22-3214(a). *Tillman v. United States*, 487 A.2d 1152, 1985 D.C. App. LEXIS 301 (1985).

In proceeding in which accused was convicted of armed robbery and possession of a prohibited weapon, trial judge's alleged facial expressions and other outward manifestations of disbelief of a defense witness was not shown to have prejudiced accused, in view of assertion that judge turned away so as to avoid revealing his

facial reaction to witness' testimony. D.C. Code §§ 22-2901, 22-3202, 22-3214(b). *Dyas v. United States*, 376 A.2d 827, 1977 D.C. App. LEXIS 359 (1977), writ of certiorari denied by 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464, 1977 U.S. LEXIS 4183 (1977).

Where defendant left hotel shortly after robbery in hotel had been committed, matched description given police officer of one of the robbers with respect to clothing, age, and general appearance, broke into run after officer started to follow him, and tried to break away after officer overtook him and said he would like to talk to him, action of arresting officer in subduing defendant and discovering switchblade knife in his back pocket was accomplished with probable cause and was not unreasonable under circumstances, and admission of knife in prosecution for possession of dangerous weapons presented no plain error or defect affecting substantial rights. D.C. Code § 22-3214; D.C. Code General Sessions Court Rules, Criminal Division rule 41(e); Fed. Rules Crim. Proc. rule 41(e), 18 U.S.C. *Herring v. United States*, 273 A.2d 835, 1971 D.C. App. LEXIS 280 (1971).

Identification of accused.

Even if accused, who elected not to testify at trial on charge of armed robbery, assault with a dangerous weapon, assault on police officer and possession of prohibited weapon, had "testimonial privilege" at trial to don jacket he was alleged to have worn at time of the offenses, denial of request that he be permitted to put on such jacket "to make double sure" that jacket had never been seen by his wife, who had testified that she had never seen the jacket, was not error. D.C. Code §§ 22-502, 22-505(a), 22-2901, 22-3202, 22-3214(a). *White v. United States*, 358 A.2d 645, 1976 D.C. App. LEXIS 279 (1976).

Indictment or information.

Armed robbery can be committed without also violating statute prohibiting possession of certain weapons; thus, possession of prohibited weapon is not lesser included offense of crime of armed robbery. D.C. Code §§ 22-2901, 22-3202, 22-3202(a), 22-3214(b). *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Instructions.

Because defendant failed to properly object to jury instruction before the jury retired to consider its verdict, appellate court would review for plain error defendant's claim that the trial court constructively amended his indictment by substituting "slapjack" for "blackjack" in jury instructions for possession of a prohibited weapon. *Savoy v. United States*, 981 A.2d 1208, 2009 D.C. App. LEXIS 496 (2009).

Error in failing to instruct that one of the elements of possession of a prohibited weapon is operability of the weapon was harmless and not plain error, where offense was closely related to offenses of assault with dangerous weapon and possession of firearm during crime of violence, and evidence indicated that defendant wielded sawed-off shotgun in menacing manner and that when it was retrieved there was one live shotgun shell in chamber and four additional shells in the magazine, such that no rational jury could have failed to find that the shotgun was operable if fully instructed on that element. D.C. Code 1981, § 22-3214(a). *Peterson v. United States*, 657 A.2d 756, 1995 D.C. App. LEXIS 66 (1995).

Trial court's instructions on specific intent and unlawfulness in prosecution for unlawful possession of a weapon were inadequate for they left the jury to speculate on what was to be considered unlawful use of a knife against another; further instruction on the intent-to-frighten variety of assault was required. D.C. Code 1981, § 22-3214(b). *Reid v. United States*, 581 A.2d 359, 1990 D.C. App. LEXIS 256 (1990).

Where appropriate, jury considering charge of unlawful possession of a weapon should be instructed that using a weapon in self-defense would not be unlawful. D.C. Code 1981, § 22-3214(b). *Reid v. United States*, 581 A.2d 359, 1990 D.C. App. LEXIS 256 (1990).

Defendant who was charged with possession of a prohibited weapon was entitled to instruction on self-defense, even though he defended on the basis that he and others were merely playing with knives at time that officer approached the group, where officer testified concerning statements made by defendant which could be interpreted as indicating that defendant was preparing to defend himself if others attacked him. D.C. Code 1981, § 22-3214(b). *Reid v. United States*, 581 A.2d 359, 1990 D.C. App. LEXIS 256 (1990).

Defendant was not entitled to instruction on defense of property to charge of possession of prohibited weapon where evidence indicated that defendant had armed himself, not in order to repossess 50 cents which he claimed another person had taken from him during a card game but, rather, to vindicate a principle. D.C. Code 1981, § 22-3214(b). *Doby v. United States*, 550 A.2d 919, 1988 D.C. App. LEXIS 213 (1988).

Failure to instruct jury that knife had to have blade longer than three inches to qualify as prohibited weapon constituted reversible error, as knife length was part of statutory definition of crime of possession of prohibited weapon with intent to use it unlawfully against another person. D.C. Code 1981, § 22-3214(b). *Kind v. United States*, 529 A.2d 294, 1987 D.C. App. LEXIS 406 (1987).

Promptly corrected misstatement by court to effect that no specific intent and only general intent need be found for conviction on count charging possession of a prohibited weapon was not so confusing as to prevent fair deliberation of defendant's innocence by jury which convicted him of the greater offense of assault with a dangerous weapon, the general intent crime, and reached no verdict, as it was instructed, on lesser included offense of possession of a prohibited weapon. D.C. Code §§ 22-502, 22-3214(b). *Darden v. United States*, 342 A.2d 24, 1975 D.C. App. LEXIS 417 (1975).

Jurisdiction.

Jury did not necessarily find that defendant intended to frighten victim, which was element of intent-to-frighten assault, by finding defendant guilty of possession of prohibited weapon with intent to use it unlawfully. D.C. Code 1981, §§ 22-504, 22-3214(b). *McGee v. United States*, 533 A.2d 1268, 1987 D.C. App. LEXIS 494 (1987).

In view of statutes proscribing the carrying of a dangerous weapon and possession of prohibited weapon, prosecution had no authority to charge defendant as a "general" repeat offender for carrying a dangerous weapon and possessing a prohibited weapon, and as defendant received no proper and timely notice that he was subject to as much as ten years' imprisonment under the statutes specifically covering the offenses, defendant in effect was merely tried as a first offender on a misdemeanor and the District of Columbia Court of General Sessions did not lack jurisdiction on theory that defendant faced possibility of being sentenced to up to ten years in prison. D.C. Code §§ 11-963(a)(1), 22-104, 22-3204, 22-3214. *Martin v. United States*, 283 A.2d 448, 1971 D.C. App. LEXIS 231 (1971).

Jurisdiction of court of general sessions extended to prosecution for carrying a dangerous weapon, possessing a prohibited weapon and driving a motor vehicle without an operator's license, notwithstanding contention that trial court had jurisdiction only over offenses punishable by fine or imprisonment and that the offenses charged carried penalties of a fine, imprisonment, or both. D.C. Code §§ 22-3204, 22-3214(a), 40-301(d). *Martin v. United States*, 283 A.2d 448, 1971 D.C. App. LEXIS 231 (1971).

Jury trial.

Defendant was entitled to a jury trial on the charge of possession of a prohibited weapon because the maximum penalty was a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both, and a potential sentence in excess of 6 months' imprisonment was sufficiently severe to render it triable by jury, and because record did not show any waiver by

defendant of her right to a jury trial, her conviction on the charge of possession of a prohibited weapon could not stand. *Diggs v. United States*, 966 A.2d 857, 2009 D.C. App. LEXIS 43 (2009).

Merger of offenses.

Defendant's convictions for possession of unregistered firearm and possession of prohibited weapon did not merge, where firearm in defendant's possession was machine gun, and machine gun could not be registered. D.C. Code 1981, § 6-2312. *Turner v. United States*, 684 A.2d 313, 1996 D.C. App. LEXIS 219 (1996).

Possession of firearm during crime of violence (PFCV) count did not merge with possession of prohibited weapon (PPW) count from same criminal incident, since PFCV required proof that defendant possessed firearm while committing crime of violence, which PPW did not, and PPW required proof of possession of specifically prohibited weapon which PFCV did not. D.C. Code 1981, §§ 22-3204(b), 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Armed robbery count did not merge with carrying pistol without license (CPWL) count from same criminal incident, as each statute required proof of element that other did not and each provision served distinct societal interest. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Carrying pistol without license (CPWL) count did not merge with possession of prohibited weapon (PPW) count from same criminal incident, since CPWL required proof that defendant did not have license, which PPW did not, and PPW required proof of possession of specifically prohibited weapon, which CPWL did not. D.C. Code 1981, §§ 22-3204(a), 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

First-degree burglary while armed count did not merge with single possession of prohibited weapon (PPW) count, from same criminal incident, since first-degree burglary required entry which PPW did not, and PPW required possession of specific prohibited weapon which first-degree burglary did not. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Armed robbery count did not merge with possession of prohibited weapon (PPW) count, since robbery required proof of taking which PPW did not, and PPW required possession of specifically prohibited weapon which armed robbery did not. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Assault with dangerous weapon (ADW) counts did not merge with possession of prohibited weapon (PPW) count from same criminal incident. D.C. Code 1981, §§ 22-502, 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Offenses of assault with dangerous weapon and possession of firearm during commission of crime of violence did not merge because each required proof of element that the other did not, and each addressed distinct societal interest. D.C. Code 1981, §§ 22-502, 22-3204(b). *Freeman v. United States*, 600 A.2d 1070, 1991 D.C. App. LEXIS 334 (1991).

Although defendant's robbery and assault with a dangerous weapon convictions had to be vacated, defendant's conviction of possession of prohibited weapon, which required proof of specific intent to use weapon unlawfully against another, an element not present in armed robbery, robbery, or assault with a dangerous weapon, did not merge into his armed robbery conviction. D.C. Code §§ 22-502, 22-2901, 22-3202, 22-3214(b). *Woody v. United States*, 369 A.2d 592, 1977 D.C. App. LEXIS 420 (1977).

Nature and elements of offenses.

— Defenses generally, nature and elements of offenses.

In order to assert defense of innocent or momentary possession of weapon to charge of carrying concealed weapon, accused must show not only absence of criminal purpose but also that his possession was excused and justified as stemming from effort to aid and enhance social policy underlying law enforcement. D.C. Code § 22-3214(a). *Worthy v. United States*, 420 A.2d 1216, 1980 D.C. App. LEXIS 379 (1980).

Proffered evidence of defendant, who was convicted of possession of sawed-off shotgun, about circumstances of his possession of shotgun at time of arrest would not constitute defense to charge pursuant to statute forbidding possession of certain dangerous weapons, in that mere possession of such weapons is forbidden without proof of intent. D.C. Code § 22-3214(a). *Worthy v. United States*, 420 A.2d 1216, 1980 D.C. App. LEXIS 379 (1980).

Defendant who was convicted of possession of weapon which he seized from his wife when she attempted to shoot him was not acting in self-defense where he pushed wife over the bed after he seized the weapon and threatened to shoot her. D.C. Code 1981, § 22-3214(b). *Cooke v. United States*, 213 A.2d 508, 1965 D.C. App. LEXIS 246 (App. 1965).

— Imitation, defective or inoperable weapons, nature and elements of offenses.

Possession of a machine gun does not constitute possession of a prohibited weapon unless

the weapon is operable. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Semiautomatic pistol capable of firing 13 consecutive shots without reloading when equipped with properly functioning magazine was "machine gun," within meaning of statute outlawing its possession, even though defendant's magazine was defective and did not automatically reload weapon. D.C. Code 1981, §§ 22-3201(c), 22-3214(a). *United States v. Woodfolk*, 656 A.2d 1145, 1995 D.C. App. LEXIS 77 (1995), writ of certiorari denied by 516 U.S. 1183, 116 S. Ct. 1286, 134 L. Ed. 2d 231, 1996 U.S. LEXIS 1934, 64 U.S.L.W. 3624 (1996).

Statute that prohibits possession of unregistered firearms is not limited to firearms that are operable; statute clearly includes within its scope inoperable weapons that may be redesigned, remade or readily converted or restored to operability. D.C. Code 1981, § 6-2311(a). *Townsend v. United States*, 559 A.2d 1319, 1989 D.C. App. LEXIS 114 (1989).

— In general.

Flip-flop sandal used by defendant to hit victim was not a dangerous weapon, as required for conviction for attempted possession of a prohibited weapon, even though victim suffered cut to her forehead that required 15 stitches; flip-flop was described as being flat and having rubber soles, description did not suggest that flip-flop was object likely to cause death or great bodily injury, and victim's injury was minor or moderate and did not constitute great bodily injury. *Stroman v. United States*, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

In a prosecution for possession of a prohibited weapon, the injury inflicted by an object in question is an important factor, often a decisive factor, in determining whether the object is, in fact, dangerous. *Stroman v. United States*, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

Test to be applied in determining whether item is deadly or dangerous weapon is whether, under circumstances, purpose of carrying item was its use as weapon. D.C. Code 1981, §§ 22-3204, 22-3214. *Peay v. United States*, 597 A.2d 1318, 1991 D.C. App. LEXIS 277 (1991).

Stationary bathroom fixtures were not "dangerous weapons" with which defendant could be armed within meaning of mayhem while armed and malicious disfigurement while armed statutes; attached sink, toilet, and bathtub against which defendant alleged hurled his wife were preexisting part of surroundings in which defendant found himself while perpetrating assault and not something which defendant could possess or with which he could arm himself. D.C. Code 1981, §§ 22-502, 22-506, 22-3202. *Edwards v. United States*, 583 A.2d 661, 1990 D.C. App. LEXIS 298 (1990).

Use of otherwise harmless object in self-defense does not constitute violation of any statutory weapons provisions. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

A furniture leg may be a dangerous weapon and its momentary possession can support a conviction for possession of a prohibited weapon. D.C. Code § 22-3214(b). *Jones v. United States*, 401 A.2d 473, 1979 D.C. App. LEXIS 351 (1979).

The statute prohibiting the possession "anywhere" with intent to use unlawfully against another an imitation pistol or other "dangerous weapon" embraces the possession of a real pistol and possession of a pistol may be charged under such statute. D.C. Code 1961, §§ 22-3204 and 22-3214(b). *U.S. v. Parker*, 185 A.2d 913, 1962 D.C. App. LEXIS 405 (Cr.App. 1962).

— Intent or purpose, nature and elements of offenses.

Under District of Columbia law, possession of a dagger is not unlawful unless the possessor intended to use it in an assaultive or otherwise unlawful manner. D.C. Code 1981, § 22-3214(b). *United States v. Christian*, 187 F.3d 663, 1999 U.S. App. LEXIS 21060 (C.A.D.C. 1999), writ of certiorari denied by 529 U.S. 1030, 120 S. Ct. 1444, 146 L. Ed. 2d 331, 2000 U.S. LEXIS 2079, 68 U.S.L.W. 3594 (2000).

Evidence that the neighborhood in which defendant possessed a dagger in his automobile was a high-crime area did not establish that defendant intended to use the dagger in an assaultive or otherwise unlawful manner, as required under District of Columbia law for possession of the dagger to be illegal, since defendant could have possessed the dagger for the lawful purpose of self-defense. D.C. Code 1981, § 22-3214(b). *United States v. Christian*, 187 F.3d 663, 1999 U.S. App. LEXIS 21060 (C.A.D.C. 1999), writ of certiorari denied by 529 U.S. 1030, 120 S. Ct. 1444, 146 L. Ed. 2d 331, 2000 U.S. LEXIS 2079, 68 U.S.L.W. 3594 (2000).

Evidence was sufficient to prove that juvenile had intent to use knife unlawfully against another, as would support delinquency adjudication for possession of a prohibited weapon (PPW (b)); juvenile was crouching behind parked car at night, wearing gloves, with open folding knife in his pocket, and fled from officer. *In re M.L.*, 24 A.3d 63, 2011 D.C. App. LEXIS 368 (2011).

For purposes of offense of attempted possession of a prohibited weapon, "great bodily injury" is bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Stroman v. United States, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

An object which is not inherently dangerous can become dangerous by its use as a weapon. *Alfaro v. United States*, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

For purposes of crime of attempted possession of a prohibited weapon (APPW), an object is a "dangerous weapon" if it is known to be likely to produce death or great bodily injury in the manner it is used, intended to be used, or threatened to be used. *Alfaro v. United States*, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

When determining whether an object is a dangerous weapon for purposes of offense of possession of a prohibited weapon (PPW), the trier of fact must consider whether the object or material is known to be likely to produce death or great bodily injury in the manner it is used, intended to be used, or threatened to be used. *Harper v. United States*, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

Carrying of knife for legitimate purposes is not prohibited by statute proscribing possession of prohibited weapon, and it is the purpose for which knife is being carried that is ultimate test for determining whether it is a deadly or dangerous weapon. D.C. Code 1981, § 22-3214(b). *Mihav v. United States*, 618 A.2d 197, 1992 D.C. App. LEXIS 341 (1992).

That knife has blade less than three inches in length does not preclude it from being a prohibited "dangerous weapon" when possessed with intent to use it unlawfully against another. D.C. Code 1981, § 22-3214(b). *Mihav v. United States*, 618 A.2d 197, 1992 D.C. App. LEXIS 341 (1992).

Some factors to consider in trial for carrying dangerous weapon when determining whether defendant intended to use object as dangerous weapon are design of instrument, conduct of defendant prior to his arrest, any physical alteration of object, and time and place of its possession. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Intent required for conviction of possession of a prohibited weapon must be the intent to use it in an assaultive or otherwise unlawful manner. D.C. Code 1981, § 22-3214(b). *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

In determining whether one's purpose in carrying an object was its use as a deadly or dangerous weapon, the fact finder must consider the circumstances surrounding its possession and use, and such circumstances include, inter alia, the design or construction of the instrument, the conduct of the defendant prior to his arrest, any physical alteration of the instrument, and the time and place the defendant was found in possession. D.C. Code 1981,

§ 22-3204. In re S.P., 465 A.2d 823, 1983 D.C. App. LEXIS 453 (1983).

Specific intent element of possession of prohibited weapon with intent to use it unlawfully against another provides basis for broader defense than defenses available for general intent weapons offenses. D.C. Code 1973, § 22-3214(b). McBride v. United States, 441 A.2d 644, 1982 D.C. App. LEXIS 264 (1982).

Weapons listed in statute which prohibits carrying particular dangerous weapons are so highly suspect and devoid of lawful use that their mere possession is forbidden, without proof of intent to use weapon for unlawful purpose required. D.C. Code § 22-3214(a). Worthy v. United States, 420 A.2d 1216, 1980 D.C. App. LEXIS 379 (1980).

Intent to use unlawfully is a required element in both the offense of assault with a dangerous weapon and the offense of possession of a dangerous weapon with intent to use unlawfully against another. D.C. Code §§ 22-502, 22-3214(b). United States v. Brooks, 330 A.2d 245, 1974 D.C. App. LEXIS 335 (1974).

— Possession, nature and elements of offenses.

Possession of a semi-automatic handgun does not constitute possession of a prohibited weapon unless the weapon meets the statutory definition of a machine gun. Moore v. United States, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Constructive possession of weapon requires proof that defendant knew of the weapon's location, had ability to exercise dominion and control over it, and intended to exercise such dominion and control. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3214(a). In re M.I.W., 667 A.2d 573, 1995 D.C. App. LEXIS 225 (1995).

Conviction for possession of prohibited weapon requires proof of intent to use weapon unlawfully against another; mere possession of weapon is insufficient. D.C. Code § 22-3214(b). Washington v. United States, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Defendant who was convicted of possession of weapon which he seized from his wife when she attempted to shoot him "possessed" the gun within statute proscribing possession of prohibited weapon, where he held the gun long enough to threaten to shoot wife. D.C. Code 1961, § 22-3214(b). Cooke v. United States, 213 A.2d 508, 1965 D.C. App. LEXIS 246 (App. 1965).

Persons and occasions exempted or privileged.

Statute providing immunity from weapons prosecution for one whose possession of weapon was solely in order to surrender it to police custody is restricted to violations of Firearms Control Regulations Act of 1975, and does not

grant immunity from prosecution for any other firearm offenses. D.C. Code 1981, § 6-2375(a). Stein v. United States, 532 A.2d 641, 1987 D.C. App. LEXIS 468 (1987), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705, 1988 U.S. LEXIS 1712, 56 U.S.L.W. 3718 (1988).

Police powers.

It is well within police power of District of Columbia to declare as contraband machine guns, sawed-off shotguns, blackjacks and switchblades without offending commerce clause. D.C. Code 1973, §§ 22-3204, 22-3214; D.C. Code 1978 Supp., § 6-1812(d, e); U.S. Const. Art. 1, § 8, cl. 3. Smith v. District of Columbia, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Presumptions and burden of proof.

In prosecution for possession of prohibited weapon, i.e., a machine gun, the government was not required to prove that defendants knew the firing capabilities of the gun. Moore v. United States, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

In a prosecution for attempted possession of a prohibited weapon, the government must prove, beyond a reasonable doubt, that the defendant possessed the weapon with the specific intent to use it unlawfully. Stroman v. United States, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

When the object used is not a dangerous weapon per se, the prosecution must prove that the object is one which is likely to produce death or great bodily injury by the use made of it, for purposes of crime of attempted possession of a prohibited weapon (APPW). Alfaro v. United States, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

To convict defendant of possession of a prohibited weapon (PPW), the government must prove beyond a reasonable doubt that the defendant has the intent to use the weapon in an assaultive or otherwise unlawful manner; although PPW does not require evidence of an attempt to do harm, such an attempt may provide evidence of the defendant's unlawful intent. Harper v. United States, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

To sustain conviction for possession of a prohibited weapon, government must prove beyond a reasonable doubt that defendant possessed the weapon with the intent to use it unlawfully against another. McCoy v. United States, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Juvenile was required to rebut presumption at close of Government's case in chief that weapon admitted into evidence in connection with charge of possession of prohibited sawed-off shotgun was not the weapon taken from

him. D.C. Code 1981, § 22-3214(a). In re D.S., 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

To establish constructive possession of prohibited weapon, government must prove that defendant: (1) knew of location of weapon; (2) had ability to exercise dominion and control over it; and (3) intended to exercise dominion and control over it. D.C. Code 1981, § 22-3214(a). *McDaniels v. United States*, 718 A.2d 530, 1998 D.C. App. LEXIS 165 (1998).

To support conviction for carrying dangerous weapon, Government must show that defendant carried in open or concealed manner a dangerous weapon, intended to do acts constituting carrying the weapon, and intended to use object as dangerous weapon. D.C. Code 1981, § 22-3204. *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

Government did not have to make out all the elements of an assault in order to make out a prima facie case that defendant possessed knife unlawfully. D.C. Code 1981, § 22-3214(b). *Strong v. United States*, 581 A.2d 383, 1990 D.C. App. LEXIS 260 (1990).

To prove that item is "shotgun" for purposes of statute prohibiting possession of shotgun with barrel less than 20 inches long, [D.C. Code 1981, § 22-3214], Government must prove that it is "operable." D.C. Code 1981, § 22-3214(a). *Washington v. United States*, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

On charge of carrying concealed weapon, burden is on government to prove that defendant was carrying weapon and that he did not have license to do so. D.C. Code 1973, § 22-3214(b). *Hilton v. United States*, 435 A.2d 383, 1981 D.C. App. LEXIS 358 (1981).

To support a conviction for possession of a prohibited weapon, the government must prove possession and a specific intent to use the weapon unlawfully against another; however, there is no requirement of evidence of an attempt to do harm. D.C. Code § 22-3214(b). *Jones v. United States*, 401 A.2d 473, 1979 D.C. App. LEXIS 351 (1979).

If instrument found on defendant after arrest was not used in crime and is not per se dangerous weapon, Government must show something in addition to fact that it was found on defendant to meet tests laid down for various dangerous weapons statutes. D.C. Code §§ 22-502, 22-3204, 22-3214. *Cooper v. United States*, 368 A.2d 554, 1977 D.C. App. LEXIS 403 (1977).

In a prosecution for possession of certain prohibited articles, including dangerous weapons, once Government alleges possession of prohibited article, burden does not shift to accused to establish innocence of possession but burden rests on Government to prove beyond reasonable doubt all elements of offense. D.C. Code § 22-3214(b). *United States v. Brooks*, 330 A.2d 245, 1974 D.C. App. LEXIS 335 (1974).

In a prosecution for possession of certain prohibited articles, including dangerous weapons, Government must establish not only that accused possessed a proscribed article but also that accused possessed it with intent to use it unlawfully against another. D.C. Code § 22-3214(b). *United States v. Brooks*, 330 A.2d 245, 1974 D.C. App. LEXIS 335 (1974).

Psychological evaluations.

Where witness in prosecution for murder and possession of prohibited weapon was long time drug addict who had used drugs on day of trial and who had been hospitalized for drug addiction, trial court abused its discretion by refusing defendant's request that trial judge subpoena and examine locally available hospital records pertaining to witness' competency. D.C. Code §§ 22-2403, 22-3214(b); 18 U.S.C. § 292(c). *United States v. Crosby*, 462 F.2d 1201, 1972 U.S. App. LEXIS 9656 (C.A.D.C. 1972).

In prosecution for carrying a dangerous weapon and possession of a prohibited weapon, trial court did not abuse discretion in refusing to order a psychiatric examination of prosecution witness prior to ruling that she was competent to testify. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

Purposes and legislative intent.

Congress enacted statutory provision expressly forbidding possession of sawed-off shotguns, except in case of certain military and law enforcement personnel, to enforce drastically a prohibition against carrying particular dangerous weapons within District of Columbia. D.C. Code § 22-3214(a). *Worthy v. United States*, 420 A.2d 1216, 1980 D.C. App. LEXIS 379 (1980).

The statute making it a crime for a person to carry "elsewhere" than in his home "or place of business or on land possessed by him a pistol without a license. . . or any deadly or dangerous weapon capable of being so concealed," and the statute prohibiting possession "anywhere" with intent to use unlawfully against another an imitation pistol reflect the purpose of Congress to strengthen the existing law and tighten controls over the possession of dangerous weapons and each has distinctive objects of correction. D.C. Code 1961, §§ 22-3204 and 22-3214(b). *U.S. v. Parker*, 185 A.2d 913, 1962 D.C. App. LEXIS 405 (Cr.App. 1962).

Questions of law and fact.

In a prosecution for possession of a prohibited weapon, when an object in question is not dangerous per se, the trier of fact must consider whether that object is known to be likely to produce death or great bodily injury in the manner it is used or threatened to be used.

Stroman v. United States, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

Whether something is a dangerous weapon, i.e., whether it is likely, as used, to produce the requisite injury, is ordinarily a question of fact to be determined by all the circumstances surrounding the assault, and the analysis may be based on familiar and common experience; thus, an ordinary object may become a dangerous weapon when it is used to injure another person. *Alfaro v. United States*, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

Question whether wooden table leg which was approximately two inches thick and two and one-half feet long and which was thrown at mailman was a "dangerous weapon" within meaning of statute prohibiting the possession of a dangerous weapon with intent to use unlawfully against another was for jury. D.C. Code § 22-3214(b). *United States v. Brooks*, 330 A.2d 245, 1974 D.C. App. LEXIS 335 (1974).

Review and disposition.

In prosecution for assault with intent to kill and possession of a rifle with intent to use it unlawfully against another, where the court found the defendant not guilty by reason of insanity and it did not appear that defendant actually understood and acquiesced that the question of his guilt was being tried in that it did not appear that he understood and acquiesced in what was being accomplished without witnesses or evidence and he protested promptly a few days after the verdict, the defendant was entitled to a new trial. D.C. Code 1951, §§ 22-501, 22-3214(b), 24-301. *Rucker v. U.S.*, 280 F.2d 623, 1960 U.S. App. LEXIS 4479 (C.A.D.C. 1960).

Where conviction for possession of a prohibited weapon had to be vacated due to lack of jury waiver, case would be remanded with instruction to enter judgment against defendant on the lesser-included offense of attempted possession of a prohibited weapon; the attempt charge was subsumed within the proof of the completed offense, and thus the government did not need to amend the information and then retry defendant on the lesser charge. *Diggs v. United States*, 966 A.2d 857, 2009 D.C. App. LEXIS 43 (2009).

Where juvenile failed to object to sufficiency of chain of custody for weapon admitted into evidence in connection with charge of possession of prohibited sawed-off shotgun, Court of Appeals was required to review claim under a plain error standard. D.C. Code 1981, § 22-3214(a). *In re D.S.*, 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

In prosecution wherein trial judge, sitting without jury, found that defendant was guilty of simple assault but not guilty of possession of prohibited weapon and wherein trial judge explained that he found victim's testimony con-

cerning assault incredible, it was probable that lenity, rather than confusion, led to defendant's acquittal on the one charge, and his conviction for assault would not be reversed. D.C. Code 1981, §§ 22-504, 22-1211, 22-3214(b). *Haynesworth v. United States*, 473 A.2d 366, 1984 D.C. App. LEXIS 327 (1984).

In prosecution for carrying a dangerous weapon and possession of a prohibited weapon, record was insufficient to determine whether any impeachable convictions of government witnesses existed, or whether they fell within ambit of Lewis, and thus on remand for resentencing, trial court had to conduct the appropriate Lewis inquiry. D.C. Code §§ 22-3204, 22-3214(b). *Rogers v. United States*, 419 A.2d 977, 1980 D.C. App. LEXIS 357 (1980).

In that motion was solely for return of weapons taken in search pursuant to warrant and in that a nolle prosequi was entered on charges arising from seizure of weapons, denial of motion for return of seized weapons would be treated as an appealable final order. D.C. Code §§ 11-721(a), 22-3214(a); D.C. Code SCR, Criminal Rule 41(g). *Epstein v. United States*, 359 A.2d 274, 1976 D.C. App. LEXIS 303 (1976).

In prosecution, without jury, for carrying a pistol without a license and for possessing a sawed-off shotgun, where record of what occurred in open court was silent as to any waiver of defendant's right to a jury trial, case would be remanded for a determination, after hearing, of whether defendant knowingly and voluntarily waived his right to jury trial in open court and requested a trial by the court, even though informations had been stamped with notation "Jury Trial Demand Withdrawn". D.C. Code §§ 16-705(a), 22-3204, 22-3214(a). *Jackson v. United States*, 262 A.2d 106, 1970 D.C. App. LEXIS 216 (App. 1970).

Where it was clear from repeated statements of trial judge in prosecution for having possession of a dangerous weapon, that the trial judge was not ruling on the information as such but on the ultimate guilt of the defendant under agreed statement of facts, and trial judge made an entry granting motion of defendant to dismiss and discharging defendant, such action was equivalent to the granting of a motion for judgment of acquittal, and therefore the United States had no right of appeal to Municipal Court of Appeals of the District of Columbia. D.C. Code 1940, §§ 22-3204, 22-3214, 23-105. *U.S. v. Martin*, 81 A.2d 651, 1951 D.C. App. LEXIS 178 (Cr.App. 1951).

Search and seizure.

Entry of hotel room without warrant and seizure of sawed-off shotgun was valid, where shotgun had first been observed on table by member of hotel staff, entry by the police was peaceful and during the daytime, and occupant

was a nonresident who had recently checked into a transient hotel, since the sawed-off shotgun posed ominous threat to the community. U.S. Const. Amend. 4; D.C. Code § 22-3214; 26 U.S.C. (I.R.C.1954) § 5861(d). *United States v. McKinney*, 477 F.2d 1184, 1973 U.S. App. LEXIS 12175 (C.A.D.C. 1973).

Where officer was authorized to make arrest of automobile occupants for illegal possession of blackjack which lay on floor of automobile, his ensuing search of automobile at same place was authorized as incidental to arrest. D.C. Code 1961, §§ 22-3214(a), 23-306(a, b). *Jefferson v. United States*, 349 F.2d 714, 1965 U.S. App. LEXIS 4957 (C.A.D.C. 1965).

Availability of various legal actions by claimant to seized property, through which personal representative of deceased sister's estate could have contested retention of alleged firearms found by police in sister's apartment, did not eliminate government's obligation to inform personal representative that property clerk intended, for specific reason, to retain property taken unless she invoked certain procedures to recover it. D.C. Code 1981, §§ 4-157, 16-3701, 22-3214 to 22-3217. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Federal government agents who were on premises pursuant to lawfully issued search warrant for seizure of pornographic material were authorized to seize weapons which were inadvertently discovered in their plain view after determining that possession of one such weapon, a modified carbine, was a violation of state law and that other weapons were unregistered in violation of police regulations. D.C. Code § 22-3214(a). *Epstein v. United States*, 359 A.2d 274, 1976 D.C. App. LEXIS 303 (1976).

Trial court erred in granting pretrial motion of defendant to suppress evidence seized without warrant on ground that information was defective, since motion could be made only by defendant aggrieved by unlawful search or seizure and for defendant to prevail it was necessary for him to demonstrate that property was illegally seized without warrant. D.C. Code § 22-3214; D.C. Code General Sessions Court Rules, Criminal Division rule 41(e). *United States v. Hobby*, 275 A.2d 235, 1971 D.C. App. LEXIS 292 (1971).

Denial of hearing de novo upon issue of whether girl in whose apartment defendant charged with possession of submachine gun was staying gave her valid consent to search of bed wherein defendant had secreted gun was not error where conflict in testimony between police officers at pretrial hearing on issue was not substantially inconsistent and defendant at no time proffered substance of any new evidence that would be offered by additional officers he had subpoenaed. D.C. Code § 22-

3214(a). *Dupont v. United States*, 259 A.2d 355, 1969 D.C. App. LEXIS 355 (App. 1969).

Where defendant, who was lawfully arrested for operating automobile without valid permit, who was taken to police station in his own automobile, and who was charged with driving without valid permit, possession of prohibited weapon and possession of numbers slips, did not protest or withhold his consent to use by police of his automobile to drive him to police station and was not coerced in any way, there was no seizure of defendant's automobile by police prior to arrival at police station. D.C. Code §§ 22-1502, 22-3214. *Burrell v. United States*, 252 A.2d 897, 1969 D.C. App. LEXIS 244 (App. 1969).

United States district court ruling, in prosecution for narcotics violation, suppressing certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, in which defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to *United States District Court* ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. D.C. Code §§ 11-521, 11-963, 22-1502, 22-3204, 22-3214; 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174. *Burrell v. United States*, 252 A.2d 897, 1969 D.C. App. LEXIS 244 (App. 1969).

Officer who was investigating speeding violation had probable cause to arrest operator of vehicle; he did not act unreasonably in opening door of vehicle once found and he was not required to disregard weapons which he saw when he opened vehicle's door, and motion to suppress evidence relating to blackjack and gun was properly denied. D.C. Code 1961, §§ 22-3204, 22-3214(a). *Mosley v. United States*, 209 A.2d 796, 1965 D.C. App. LEXIS 181 (App. 1965).

Speedy trial.

While 49-week delay in bringing defendant to trial on charges of possession of prohibited weapon and carrying a deadly weapon seemed excessive in view of nature of the offenses, delay was but one factor by which speedy trial claim was to be weighed. D.C. Code §§ 22-3204, 22-3214, 22-3214(a). *United States v. Perkins*, 374 A.2d 882, 1977 D.C. App. LEXIS 335 (1977).

Forty-nine-week interim between arrest and trial did not deny defendant a speedy trial since although demand for trial was timely made and defendant was ready for trial on all trial dates except during brief change of counsel, there was a clear lack of prejudice in that, among other things, defendant was not incarcerated and there were no identification or alibi issues

that could have been eroded by the delay, at least two months' delay was of defendant's own making and 20 days before dismissal of the information for want of a speedy trial the same trial judge had found no speedy trial violation. D.C. Code §§ 22-3204, 22-3214, 22-3214(a). United States v. Perkins, 374 A.2d 882, 1977 D.C. App. LEXIS 335 (1977).

Validity.

Statute prohibiting possession of sawed-off shotgun with barrel less than 20 inches in length was not void for vagueness; person of ordinary intelligence could reasonably understand what "barrel" meant within meaning of statute and that possession of shotgun with barrel less than 20 inches was prohibited. U.S. Const. Amend. 14; D.C. Code 1981, §§ 22-3201(b), 22-3214(a). In re D.S., 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

Statute which proscribes that no person shall possess dangerous weapons is not unconstitutionally vague. D.C. Code § 22-3214(b). Walden v. United States, 351 A.2d 515, 1976 D.C. App. LEXIS 470 (1976).

Statute which prohibits a person from possessing, with intent to use unlawfully against another, an imitation pistol or dagger, dirk, razor, stiletto, or knife with a blade longer than three inches or other dangerous weapon is not void for vagueness on ground that term "dangerous weapon" is not defined with sufficient particularity. D.C. Code § 22-3214(b). United States v. Brooks, 330 A.2d 245, 1974 D.C. App. LEXIS 335 (1974).

The 1953 Act specifically prohibiting possession of knife with intent to use unlawfully against another was not intended to cover the whole subject matter of knives in District of Columbia, in the sense of repealing deadly weapon statute which required no proof of unlawful intent, and hence information alleging violation of the older statute was sufficient though it specified knife as the deadly weapon and did not allege intent to use knife unlawfully against another. D.C. Code 1951, §§ 22-3204, 22-3214(b). U.S. v. Shannon, 144 A.2d 267, 1958 D.C. App. LEXIS 253 (Cr.App. 1958).

Verdict.

Acquittal by defendant of assault with a dangerous weapon did not require his acquittal on companion charge of carrying a pistol which he used to defend himself on ground that such acquittal demonstrated conclusively that defendant was carrying pistol for a lawful purpose notwithstanding defendant was exposed to a serious current threat by victim, that he did not have time to get a license and that he made a serious attempt to secure police protection, in light of the history of antiweapons legislation evidencing the clearest intent to drastically tighten ban on carrying dangerous

weapons. D.C. Code 1951, §§ 22-502, 22-3204, 22-3214. Cooke v. U.S., 275 F.2d 887, 1960 U.S. App. LEXIS 5296 (C.A.D.C. 1960).

Where there was evidence that defendant not only struck officer with nightstick but also hit him and engaged in general scuffling, finding that defendant was not guilty of charge involving possession of nightstick did not preclude conviction on charge of simple assault. D.C. Code §§ 22-504, 22-3214(b). Matthews v. United States, 267 A.2d 826, 1970 D.C. App. LEXIS 316 (App. 1970), writ of certiorari denied by 404 U.S. 884, 92 S. Ct. 221, 30 L. Ed. 2d 166, 1971 U.S. LEXIS 820 (1971).

Weight and sufficiency of evidence.

Possession of loaded machine gun, relevantly large amount of cash all in small bills, crack cocaine, including separately wrapped rocks, while traveling in moving vehicle in area known for high drug traffic was sufficient evidence to support conviction for possession with intent to distribute. United States v. Gibbs, 904 F.2d 52, 1990 U.S. App. LEXIS 8520 (C.A.D.C. 1990).

Evidence which was adequate to enable jury to find that the possession of weapons, which were in a car in which defendants were riding, could be knowledgeably attributable to defendants was sufficient to sustain their convictions for possession of unregistered firearms, possession of prohibited weapons and carrying a dangerous weapon. U.S. Const. Amend. 4; 26 U.S.C. (I.R.C.1954) § 5861(d); D.C. Code §§ 22-3204, 22-3214(a). United States v. Matthews, 480 F.2d 1191, 1973 U.S. App. LEXIS 9251 (C.A.D.C. 1973).

Evidence was sufficient to find defendant guilty of possession of a prohibited weapon, namely a hammer; defendant testified that she kept several hammers in her apartment for use as weapons and to hang heavy objects, victim testified that defendant swung one of those hammers at him intentionally, missing his face by only a few inches, and that it was he, not defendant, who called the police, and even a "small" hammer, if used with an intent to cause serious harm to another, could be a dangerous weapon. Diggs v. United States, 966 A.2d 857, 2009 D.C. App. LEXIS 43 (2009).

Evidence established non-lessee defendant's constructive possession of drugs and gun found in apartment, in prosecution for maintaining a crack house and possession of prohibited weapon; defendant had key to apartment, he admitted living there, he had been photographed there, his wife was the lessee, and the 91 plastic bags of crack cocaine and the semi-automatic handgun recovered were found in the apartment's only bedroom, lying in plain view next to defendant's personal papers. Moore v. United States, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Evidence was insufficient to support finding that plastic flowerpot, as used by defendant in altercation with complainant, was a dangerous weapon within meaning of offense of possession of a prohibited weapon (PPW), even though complainant was afraid someone would get hurt when defendant threw flowerpot at rear, passenger-side portion of complainant's vehicle as it started to pull away; evidence showed flowerpot was "little," and there was no evidence that flowerpot could have produced "death or great bodily injury" to occupants of vehicle. *Harper v. United States*, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

Evidence was sufficient to support convictions for assault with a dangerous weapon and possession of a prohibited weapon, where defendant grabbed victim from behind, pointed knife at her throat, and threatened to kill her, defendant choked victim and pushed her down a flight of stairs, and defendant wielded knife that was seven to nine inches long with serrated edges. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Where characteristics of weapon in juvenile's possession which brought it within parameters of statute prohibiting possession of sawed-off shotguns were plain and obvious on its face, Government was not required to prove that juvenile knew that weapon was prohibited, for juvenile to be found guilty of offense; it was sufficient for Government to demonstrate that juvenile knowingly and intentionally possessed shotgun and that shotgun's barrel in fact was less than 20 inches in length. D.C. Code 1981, § 22-3214(a). In re D.S., 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

Evidence supported finding that juvenile was guilty of possessing prohibited sawed-off shotgun; juvenile admitted that he possessed gun, and there was evidence that barrel of gun was less than 20 inches and that gun was operable. D.C. Code 1981, § 22-3214(a). In re D.S., 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

Evidence supported jury's conclusion that defendant had constructive possession of prohibited weapon, considering that loaded AK-47 automatic rifle was found on ground one foot from open rear door of automobile, that defendant owned, and was operating, such automobile while attempting to elude pursuing police officers, that automobile was driven to unlighted area where defendant and other occupants abandoned vehicle and continued their flight, and that significant size of weapon precluded concealment in vehicle without defendant's active participation. D.C. Code 1981, § 22-3214(a). *McDaniels v. United States*, 718 A.2d 530, 1998 D.C. App. LEXIS 165 (1998).

Defendant's claim that he was on his way to police station to surrender machine gun when he was arrested was insufficient to establish innocent possession of machine gun in his pos-

session, in view of evidence that defendant has been in possession of the weapon for over four hours when arrested and had attempted to flee when police stopped vehicle in which he was a passenger. D.C. Code 1981, §§ 6-2302(10), 22-3201(c). *Turner v. United States*, 684 A.2d 313, 1996 D.C. App. LEXIS 219 (1996).

Evidence was insufficient to prove that juvenile knew of location of gun in vehicle in which he was a passenger or that juvenile intended to exercise dominion and control over the gun and, thus, was insufficient to prove that he was in constructive possession of the weapon; there was no direct evidence that juvenile knew where the gun was located, fact that juvenile began to walk away from car did not manifest consciousness of guilt, there was no evidence that juvenile was in the car for substantial period of time or that vehicle had functional interior light so that juvenile could have seen the gun, and intent to exercise control over the gun could not be inferred from fact that juvenile may have been able to feel the gun with his feet. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3214(a). In re M.I.W., 667 A.2d 573, 1995 D.C. App. LEXIS 225 (1995).

Convictions for multiple charges arising out of armed robbery of apartment building were supported by the identification of defendants by victims and police officers, and testimony that the defendants' weapons were operational. D.C. Code 1981, §§ 22-502, 22-1801(a), 22-2101, 22-2901, 22-3202, 22-3204(a, b), 22-3214(a). *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Operability of weapon, as an element of possession of a prohibited weapon, can be proved by circumstantial evidence. D.C. Code 1981, § 22-3214(a). *Peterson v. United States*, 657 A.2d 756, 1995 D.C. App. LEXIS 66 (1995).

In prosecution for possession of prohibited weapon and carrying a deadly or dangerous weapon, evidence that defendant was carrying a paring knife in the context of telling complainant to stop looking at him and get away from him, and that the knife was knowingly presented to complainant, was sufficient to show carrying of possession of knife with intent to use it unlawfully, and, thus, that knife thus constituted a dangerous weapon. D.C. Code 1981, §§ 22-3204, 22-3214(b). *Mihav v. United States*, 618 A.2d 197, 1992 D.C. App. LEXIS 341 (1992).

Jury could find that defendant had intent to unlawfully use knife which he possessed, based on testimony by officer that, when he approached group of people, defendant was holding a knife and stated that he was going to show the other people not to cause him trouble and that he then started yelling towards the other people and became very disorderly. D.C. Code 1981, § 22-3214(b). *Reid v. United States*,

581 A.2d 359, 1990 D.C. App. LEXIS 256 (1990).

Evidence, which established that end of machine gun protruding from under driver's seat of automobile was unconcealed at juvenile's feet and so close that he would have virtually kicked it during the 15 to 20 minutes that he was alone in backseat of automobile, was sufficient to support finding of constructive possession and therefore evidence supported adjudication of delinquency based upon unlawful possession of a machine gun and ammunition. D.C. Code 1981, §§ 6-2361, 22-3214(a). In re F.T.J., 578 A.2d 1161, 1990 D.C. App. LEXIS 198 (1990).

Evidence in prosecution for possession of prohibited weapon was sufficient to permit jury to find that sawed-off shotgun allegedly possessed by defendant was "operable." D.C. Code 1981, §§ 22-3201, 22-3214(a), 22-3215a. Washington v. United States, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

Circumstantial evidence may support finding of "operability" of shotgun for purposes of statute prohibiting possession of shotgun with barrel less than 20 inches long. D.C. Code 1981, §§ 22-3201, 22-3214(a). Washington v. United States, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

In prosecution for carrying a deadly or dangerous weapon capable of being concealed on or about the person, evidence that defendant both intended to and did carry and twirl around his body a nunchaku in the midst of a crowd of onlookers and had no explanation as to any reasons he had for carrying the nunchaku at time and in the area of his arrest was sufficient to support finding that defendant was carrying a deadly or dangerous weapon in violation of dangerous weapons statute. D.C. Code 1981, § 22-3204. In re S.P., 465 A.2d 823, 1983 D.C. App. LEXIS 453 (1983).

Evidence was sufficient to sustain conviction for possession of prohibited weapon. D.C. Code § 22-3214. Burrell v. United States, 252 A.2d 897, 1969 D.C. App. LEXIS 244 (App. 1969).

Evidence was sufficient to sustain conviction for assault and possession of dangerous weapon with intent to use the same unlawfully. D.C. Code § 22-3214(b). Willis v. United States, 250 A.2d 569, 1969 D.C. App. LEXIS 215 (App. 1969).

Evidence was sufficient to sustain defendant's conviction of possession of sawed-off shotgun. D.C. Code 1961, § 22-3214(a). Wright v. United States, 224 A.2d 475, 1966 D.C. App. LEXIS 250 (App. 1966).

§ 22-4515. Penalties.

Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

(July 8, 1932, 47 Stat. 654, ch. 465, § 15.)

Section references. — This section is referred to in §§ 22-4503, 22-4504, and 22-4514.

Prior Codifications. — 1981 Ed., § 22-3215.

1973 Ed., § 22-3215.

Emergency legislation. — For temporary (90 day) amendment of section, see § 6(b) of Sentencing Reform Congressional Review

Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 6(b) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

CASE NOTES

ANALYSIS

Admissibility of evidence.
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Right to trial by jury.
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Record in prosecution for carrying a pistol

without a license in violation of District of Columbia statute supported finding that defendant, to whom Miranda warnings were read by policeman from standard police form and who was given the form to read in police station before being questioned, but who was not asked if he understood contents of form, had been sufficiently informed of his right to remain silent and to counsel. D.C. Code §§ 16-706, 22-3204, 22-3215; U.S. Const. Amend. 5. Brewster v. United States, 271 A.2d 409, 1970 D.C. App. LEXIS 359 (App. 1970).

In view of overwhelming evidence that the particular address claimed by defendant to be his dwelling house was not his dwelling house, any error with respect to whether defendant waived any of his constitutional rights to remain silent and to counsel before being questioned as to his residence was harmless in prosecution for violation of District of Columbia statute prohibiting the carrying of an unlicensed pistol except in one's dwelling house. D.C. Code §§ 16-706, 22-3204, 22-3215; U.S. Const. Amend. 5. *Brewster v. United States*, 271 A.2d 409, 1970 D.C. App. LEXIS 359 (App. 1970).

Forfeitures an claim of seized property.

Availability of various legal actions by claimant to seized property, through which personal representative of deceased sister's estate could have contested retention of alleged firearms found by police in sister's apartment, did not eliminate government's obligation to inform personal representative that property clerk intended, for specific reason, to retain property taken unless she invoked certain procedures to recover it. D.C. Code 1981, §§ 4-157, 16-3701, 22-3214 to 22-3217. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Indictment and information.

In prosecution for carrying unlicensed pistol and for increased punishment by reason of recidivism, defense counsel's concession, in bail application, that defendant had been convicted of robbery in 1957 was insufficient proof, for purpose of sentencing under recidivist statute, that defendant had been convicted of robbery in 1958 as charged by government. D.C. Code §§ 22-2901, 22-3204. *United States v. Clemons*, 440 F.2d 205, 1970 U.S. App. LEXIS 6320 (C.A.D.C. 1970), writ of certiorari denied by 401 U.S. 945, 91 S. Ct. 959, 28 L. Ed. 2d 227, 1971 U.S. LEXIS 3030 (1971).

Merger of offenses.

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim, was not put twice in jeopardy for same offense by prosecution upon two counts, for assault with deadly weapon, and also for carrying concealed unlicensed weapon, since element of proof in second count, that gun was unlicensed, was not necessary in proof of assault charge. D.C. Code 1951, §§ 22-3204, 22-3215. *Kendrick v. U.S.*, 238 F.2d 34, 1956 U.S. App. LEXIS 3983 (C.A.D.C. 1956).

When two legislative provisions apply to and provide punishment for same criminal act, courts must discern from legislative intent whether the two statutory crimes are the same offense, or whether the separate statutes were intended to allow multiple punishments; in absence of clear legislative intent to allow multiple punishments for the same act, courts must

compare statutory elements to determine whether the two offenses merge. U.S.C. Const. Amend. 5. *Ray v. United States*, 620 A.2d 860, 1993 D.C. App. LEXIS 37 (1993).

Recidivism.

A state legislature does not violate equal protection provision of Fourteenth Amendment of United States Constitution, in enacting statutes which impose heavier penalty for second or subsequent offenses, since fact of prior conviction in such cases is considered as affording reasonable basis for classification. D.C. Code 1951, §§ 22-3204, 22-3215. *Kendrick v. U.S.*, 238 F.2d 34, 1956 U.S. App. LEXIS 3983 (C.A.D.C. 1956).

Where defendant was charged with carrying unlicensed pistol after felony conviction, and, on defendant's motion, allegations in indictment concerning prior conviction of felony were stricken, and defendant's counsel, out of defendant's hearing, stipulated that defendant had previously been convicted of a felony and waived later proof thereof, but concession of counsel was made without defendant's knowledge or consent, there was no waiver by defendant of necessity of proof of felony conviction, and imposition of enhanced sentence, on ground of prior felony conviction, was error. D.C. Code 1951, §§ 22-3204, 22-3215. *Jackson v. U.S.*, 221 F.2d 883, 1955 U.S. App. LEXIS 3592 (C.A.D.C. 1955).

If a person has not previously been convicted of a violation of § 22-3204 or of a felony, the violation is subject to the misdemeanor penalties of this section. On the other hand, if a person has a prior conviction for a violation of § 22-3204 or has a felony conviction, the person is subject to the imposition of a felony sentence pursuant to § 22-3204(a)(2). *United States v. Bigelow*, 123 WLR 401 (Super. Ct. 1995).

Review.

Though defendant did not expressly attack sentence imposed for carrying unlicensed pistol as being in excess of that authorized by law, and though he did not move in District Court that sentence be corrected, matter of legality of sentence could nevertheless be determined by Court of Appeals on appeal, since Court of Appeals can notice any error apparent from the record, whether called to its attention or not. D.C. Code 1951, §§ 22-3204, 22-3215; 18 U.S.C. § 2255; Fed. Rules Crim. Proc. rule 32(b), 18 U.S.C. *Jackson v. U.S.*, 221 F.2d 883, 1955 U.S. App. LEXIS 3592 (C.A.D.C. 1955).

Right to trial by jury.

Where indictment charged defendant with carrying a pistol without a license after having been convicted of a felony, and, on motion of defendant's counsel, reference to felony conviction was stricken, defendant was not entitled to a jury trial with respect to question of felony

conviction. D.C. Code 1951, §§ 22-3204, 22-3215. *Jackson v. U.S.*, 221 F.2d 883, 1955 U.S. App. LEXIS 3592 (C.A.D.C. 1955).

Defendant was entitled to a jury trial on the charge of possession of a prohibited weapon because the maximum penalty was a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both, and a potential sentence in excess of 6 months' imprisonment was sufficiently severe to render it triable by jury, and because record did not show any waiver by defendant of her right to a jury trial, her conviction on the charge of possession of a prohibited weapon could not stand. *Diggs v. United States*, 966 A.2d 857, 2009 D.C. App. LEXIS 43 (2009).

Defendant was entitled to jury trial in trial for offense of carrying a pistol without a license, possession of unregistered firearm and possession of ammunition without valid registration, where maximum potential sentence of imprisonment

for each offense was one year. D.C. Code 1981, §§ 6-2376, 16-705(a), 22-3204, 22-3215; Criminal Rule 23(a). *Jackson v. United States*, 498 A.2d 185, 1985 D.C. App. LEXIS 480 (1985).

Since, on charge of carrying a pistol without a license, the potential maximum imprisonment exceeded 90 days, defendant was entitled to a trial by jury. D.C. Code §§ 16-705(b)(1), 22-3204, 22-3215. *Copening v. United States*, 353 A.2d 305, 1976 D.C. App. LEXIS 491 (1976).

Validity of sentence and punishment.

Sentence of 360 days for carrying pistol without license was not excessive but was legally permissible under the statute providing that applicable penalty was fine of not more than \$1,000 or imprisonment for not more than one year, or both. D.C. Code 1961, §§ 22-3204, 22-3215. *Gillard v. United States*, 202 A.2d 776, 1964 D.C. App. LEXIS 262 (App. 1964).

§ 22-4515a. Manufacture, transfer, use, possession, or transportation of Molotov cocktails, or other explosives for unlawful purposes, prohibited; definitions; penalties.

(a) No person shall within the District of Columbia manufacture, transfer, use, possess, or transport a molotov cocktail. As used in this subsection, the term "molotov cocktail" means: (1) a breakable container containing flammable liquid and having a wick or a similar device capable of being ignited; or (2) any other device designed to explode or produce uncontained combustion upon impact; but such term does not include a device lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose.

(b) No person shall manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, with the intent that the same may be used unlawfully against any person or property.

(c) No person shall, during a state of emergency in the District of Columbia declared by the Mayor pursuant to law, or during a situation in the District of Columbia concerning which the President has invoked any provision of Chapter 15 of Title 10, United States Code, manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, except at his or her residence or place of business.

(d) Whoever violates this section shall: (1) for the first offense, be sentenced to a term of imprisonment of not less than 1 and not more than 5 years; (2) for the second offense, be sentenced to a term of imprisonment of not less than 3 and not more than 15 years; and (3) for the third or subsequent offense, be sentenced to a term of imprisonment of not less than 5 years and not more than 30 years. In the case of a person convicted of a third or subsequent violation of

this section, Chapter 402 of Title 18, United States Code (Federal Youth Corrections Act) shall not apply. For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the third or subsequent conviction for an offense defined by this section is a Class A felony.

(July 8, 1932, 47 Stat. 654, ch. 465, § 15A; July 29, 1970, 84 Stat. 603, Pub. L. 91-358, title II, § 209; May 21, 1994, D.C. Law 10-119, § 15(l), 41 DCR 1639; June 8, 2001, D.C. Law 13-302, § 6(b), 47 DCR 7249.)

Prior Codifications. — 1981 Ed., § 22-3215a.

1973 Ed., § 22-3215a.

Effect of amendments. — D.C. Law 13-302, in subsec. (d), substituted “not more than 30 years” for “of any term of years up to life imprisonment”, and added the last sentence.

Emergency legislation. — For temporary (90-day) amendment of section, see § 6(b) of the Sentencing Reform Emergency Amendment Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271).

For temporary (90 day) amendment of section, see § 6(b) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

Legislative history of Law 10-119. — For legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 13-302. — For Law 13-302, see notes following § 22-4502.

References in text. — “Chapter 15 of Title 10, United States Code,” referred to in (c), is codified at 10 U.S.C. § 331, et seq.

“Chapter 402 of Title 18, United States Code

(Federal Youth Correction Act),” referred to in subsection (d), was repealed effective October 12, 1984, by 98 Stat. 2027, Pub. L. 98-473, with delayed effective dates in certain cases.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Instructions.

Review.

Weight and sufficiency of evidence.

Instructions.

Giving of instruction that jurors were permitted to infer that second defendant was “guilty of the crimes charged,” if they determined, beyond a reasonable doubt, that he was found in unexplained, exclusive possession of recently stolen property was reversible error where the presumed fact of guilt of arson, possession of a Molotov cocktail and second-degree burglary while armed with a Molotov cocktail did not flow from possession of recently stolen military rifles. D.C. Code §§ 22-401, 22-1801(b), 22-3202, 22-3215a. *United States v. Carter*, 522

F.2d 666, 1975 U.S. App. LEXIS 13956 (C.A.D.C. 1975).

Review.

Where the evidentiary failure relating to charge of second-degree burglary while armed with Molotov cocktail concerned only circumstance of defendant being armed, retrial of defendant, mandated on other grounds, could properly include lesser charge of second-degree burglary. D.C. Code §§ 22-3202, 22-3215a. *United States v. Carter*, 522 F.2d 666, 1975 U.S. App. LEXIS 13956 (C.A.D.C. 1975).

Weight and sufficiency of evidence.

Evidence was not sufficient to support convictions for arson, second-degree burglary while armed with a Molotov cocktail and possession of a Molotov cocktail. D.C. Code §§ 22-401,

22-1801(b), 22-3202, 22-3215a. *United States v. Carter*, 522 F.2d 666, 1975 U.S. App. LEXIS 13956 (C.A.D.C. 1975).

Evidence supported convictions for assault with intent to kill while armed, arson, destruction of property, and possession of Molotov cocktail, all related to firebombing incident; there was evidence that defendant was extremely attached to his infant child and hostile

toward mother/victim's contacts with child, evidence of two conversations linking defendant to potential use of Molotov cocktails, and testimony of witness that he saw someone fitting defendant's description running from scene immediately after arson. *Russell v. United States*, 701 A.2d 1093, 1997 D.C. App. LEXIS 246 (1997).

§ 22-4516. Severability.

If any part of this chapter is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this chapter.

(July 8, 1932, 47 Stat. 654, ch. 465, § 16.)

Prior Codifications. — 1981 Ed., § 22-3216. 1973 Ed., § 22-3216.

§ 22-4517. Dangerous articles; definition; taking and destruction; procedure.

(a) As used in this section, the term "dangerous article" means:

(1) Any weapon such as a pistol, machine gun, sawed-off shotgun, blackjack, slingshot, sandbag, or metal knuckles; or

(2) Any instrument, attachment, or appliance for causing the firing of any firearms to be silent or intended to lessen or muffle the noise of the firing of any firearms.

(b) A dangerous article unlawfully owned, possessed, or carried is hereby declared to be a nuisance.

(c) When a police officer, in the course of a lawful arrest or lawful search, or when a designated civilian employee of the Metropolitan Police Department in the course of a lawful search, discovers a dangerous article which the officer reasonably believes is a nuisance under subsection (b) of this section the officer shall take it into his or her possession and surrender it to the Property Clerk of the Metropolitan Police Department.

(d)(1) Within 30 days after the date of such surrender, any person may file in the office of the Property Clerk of the Metropolitan Police Department a written claim for possession of such dangerous article. Upon the expiration of such period, the Property Clerk shall notify each such claimant, by registered mail addressed to the address shown on the claim, of the time and place of a hearing to determine which claimant, if any, is entitled to possession of such dangerous article. Such hearing shall be held within 60 days after the date of such surrender.

(2) At the hearing the Property Clerk shall hear and receive evidence with respect to the claims filed under paragraph (1) of this subsection. Thereafter he or she shall determine which claimant, if any, is entitled to possession of such dangerous article and shall reduce his or her decision to writing. The Property Clerk shall send a true copy of such written decision to each claimant by registered mail addressed to the last known address of such claimant.

(3) Any claimant may, within 30 days after the day on which the copy of such decision was mailed to such claimant, file an appeal in the Superior Court of the District of Columbia. If the claimant files an appeal, he or she shall at the same time give written notice thereof to the Property Clerk. If the decision of the Property Clerk is so appealed, the Property Clerk shall not dispose of the dangerous article while such appeal is pending and, if the final judgment is entered by such court, he or she shall dispose of such dangerous article in accordance with the judgment of such court. The Superior Court of the District of Columbia is authorized to determine which claimant, if any, is entitled to possession of the dangerous article and to enter a judgment ordering a disposition of such dangerous article consistent with subsection (f) of this section.

(4) If there is no such appeal, or if such appeal is dismissed or withdrawn, the Property Clerk shall dispose of such dangerous article in accordance with subsection (f) of this section.

(5) The Property Clerk shall make no disposition of a dangerous article under this section, whether in accordance with his or her own decision or in accordance with the judgment of the Superior Court of the District of Columbia, until the United States Attorney for the District of Columbia certifies to the Property Clerk that such dangerous article will not be needed as evidence.

(e) A person claiming a dangerous article shall be entitled to its possession only if: (1) such person shows, on satisfactory evidence, that such person is the owner of the dangerous article or is the accredited representative of the owner, and that the ownership is lawful; (2) such person shows on satisfactory evidence that at the time the dangerous article was taken into possession by a police officer or a designated civilian employee of the Metropolitan Police Department, it was not unlawfully owned and was not unlawfully possessed or carried by the claimant or with his or her knowledge or consent; and (3) the receipt of possession by the claimant does not cause the article to be a nuisance. A representative is accredited if such person has a power of attorney from the owner.

(f) If a person claiming a dangerous article is entitled to its possession as determined under subsections (d) and (e) of this section, possession of such dangerous article shall be given to such person. If no person so claiming is entitled to its possession as determined under subsections (d) and (e) of this section, or if there be no claimant, such dangerous article shall be destroyed. In lieu of such destruction, any such serviceable dangerous article may, upon order of the Mayor of the District of Columbia, be transferred to and used by any federal or District Government law-enforcing agency, and the agency receiving same shall establish property responsibility and records of these dangerous articles.

(g) The Property Clerk shall not be liable in damages for any action performed in good faith under this section.

(July 8, 1932, ch. 465, § 18; Feb. 20, 1952, 66 Stat. 8, ch. 47, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); May 21, 1994, D.C. Law 10-119, § 15(m), 41 DCR 1639; June 12, 1999, D.C. Law 12-284, § 7, 46 DCR 1328.)

Cross references. — Ammunition feeding devices transfers, prohibition and exception under this section, see § 5-133.16.

Return of property by Property Clerk, see § 5-119.06.

Prior Codifications. — 1981 Ed., § 22-3217.

1973 Ed., § 22-3217.

Temporary Amendment of Section. — Section 7 of D.C. Law 12-282 inserted “or when a designated civilian employee of the Metropolitan Police Department in the course of a lawful search” in (c); and, in (e), inserted “or a designated civilian employee of the Metropolitan Police Department.”

Section 13(b) of D.C. Law 12-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 7 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 7 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 10-119. — For

legislative history of D.C. Law 10-119, see Historical and Statutory Notes following § 22-4502.

Legislative history of Law 12-282. — For legislative history of D.C. Law 12-282, see Historical and Statutory Notes following § 22-4514.

Legislative history of Law 12-284. — For legislative history of D.C. Law 12-284, see Historical and Statutory Notes following § 22-4514.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Forfeiture and disposition of property seized.
Rules and regulations.
Searches and seizures.

Forfeiture and disposition of property seized.

Personal representative of deceased sister's estate, who twice wrote police department property clerk, followed by letter from her attorney, asserting her right to guns seized by police from her deceased sister's apartment, was entitled to hearing before property clerk regarding continued retention of guns notwithstanding fact that letters did not specifically request hearing. U.S.C. Const.Amends. 5, 14; 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-157, 16-3701, 22-3217. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Availability of various legal actions by claimant to seized property, through which personal representative of deceased sister's estate could have contested retention of alleged firearms found by police in sister's apartment, did not eliminate government's obligation to inform

personal representative that property clerk intended, for specific reason, to retain property taken unless she invoked certain procedures to recover it. D.C. Code 1981, §§ 4-157, 16-3701, 22-3214 to 22-3217. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Issues of whether items held by police department property clerk were dangerous articles under District of Columbia law, and thus were not forfeitable, and whether forfeiture hearing procedure was constitutionally inadequate in placing burden on claimant to show that property was not subject to forfeiture, were not ripe for decision where there had been no hearing. D.C. Code 1981, §§ 6-2301 et seq., 22-3217, 22-3217(d)(3). *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Personal representative of her deceased sister's estate seeking to recover possession of alleged firearms seized from deceased sister's apartment by police was challenging accuracy of notice procedures themselves under District of Columbia law, rather than unauthorized negligent tortious act by District of Columbia officials, and thus adequately stated claim un-

der § 1983. D.C. Code 1981, § 4-157 to 4-160, 22-3217; 42 U.S.C. § 1983. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Under either statute governing general civil jurisdiction or under specific jurisdiction conferred by statute governing dangerous articles, proceeding in superior court for return of shotgun held by police was *de novo*. D.C. Code §§ 11-921, 22-3217(d)(3). *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

Rules and regulations.

Unsuccessful efforts by board of commissioners to obtain legislation supplementing 1932 gun control law enacted for the District of Columbia, and congressional inaction on the commissioners' requests, did not indicate doubt as to commissioners' authority to adopt gun control regulations and did not obliterate authority derived from 1906 statute authorizing gun control regulations. D.C. Code §§ 1-227,

22-3201 to 22-3217. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Section of District of Columbia Code empowering council to make all regulations deemed necessary for regulation of firearms, a section of act prohibiting the killing of wild birds and wild animals, conferred power to regulate firearms for the protection of people as well as wildlife. D.C. Code §§ 1-227, 22-3201 to 22-3217. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Searches and seizures.

Weapons which might affect escape of persons arrested may be validly seized under search warrant though not particularly described therein. U.S. Const. Amend. 4. *Palmer v. U.S.*, 203 F.2d 66, 1953 U.S. App. LEXIS 3335 (C.A.D.C. 1953).

SUBTITLE VI. REPEALED PROVISIONS.

CHAPTER 46. EMBEZZLEMENT [REPEALED].

Sec.

22-4601 to 22-4611. [Repealed].

§§ 22-4601 to 22-4611. Embezzlement of property of District; embezzlement by agent, attorney, clerk, servant, or agent of a corporation; embezzlement of note not delivered; receiving embezzled property; embezzlement by carriers and innkeepers; embezzlement by warehouseman, factor, storage, forwarding, or commission merchant; violations of §§ 22-4602 to 22-4606 where value of property less than \$100; conversion by commission merchant, consignee, person selling goods on commission, and auctioneers; embezzlement by mortgagor of personal property in possession; embezzlement by executors and other fiduciaries; taking property without right [Repealed].

Repealed.

(Dec. 1, 1982, D.C. Law 4-164, § 602(e)-(o), 29 DCR 3976.)

Prior Codifications. — 1981 Ed., §§ 22-1201 to 22-1211.

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133,

which was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

CHAPTER 47. LARCENY; RECEIVING STOLEN GOODS [REPEALED].

Sec.

22-4701 to 22-4708. [Repealed].

§§ 22-4701 to 22-4708. Grand larceny; petit larceny; order of restitution; larceny after trust; unauthorized use of vehicles; theft from vehicles; receiving stolen goods; stealing property of District; receiving property stolen from District; destroying stolen property [Repealed].

Repealed.

(Dec. 1, 1982, D.C. Law 4-164, § 602(y)-(gg), 29 DCR 3976.)

Prior Codifications. — 1981 Ed., §§ 22-2201 to 22-2208.

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the Judiciary. The Bill was adopted on first,

amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

Editor’s notes. — Former § 22-2202, 1981 Ed., had been amended by D.C. Law 4-202.

CHAPTER 48. RAPE [REPEALED].

Sec.

22-4801. [Repealed].

§ 22-4801. Definition and penalty [Repealed].

Repealed.

(May 23, 1995, D.C. Law 10-257, § 501(a), 42 DCR 53.)

Prior Codifications. — 1981 Ed., § 22-2801.

Legislative history of Law 10-257. — Law 10-257, the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and

December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

Editor’s notes. — Former § 22-2801 1981 Ed. had also been amended by § 2(r) of D.C. Law 10-119.

CHAPTER 49. SEDUCTION [REPEALED].

Sec.

22-4901, 22-4902. [Repealed].

§§ 22-4901, 22-4902. Seduction; seduction by teacher [Repealed].

Repealed.

(May 23, 1995, D.C. Law 10-257, § 501(a), 42 DCR 53.)

Prior Codifications. — 1981 Ed., §§ 22-3001, 22-3002.

Legislative history of Law 10-257. — Law 10-257, the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and

December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

Editor’s notes. — Former §§ 22-3001 and 22-3002 1981 Ed. had also been amended by D.C. Law 10-119, § 2.

CHAPTER 50. WAREHOUSE RECEIPTS [REPEALED].

Sec.

22-5001 to 22-5006. [Repealed].

§§ 22-5001 to 22-5006. Issue of receipt for goods not received; issue of receipt containing false statement; issue of duplicate receipts not so marked; issue of receipt that does not state warehouseman's ownership of goods; delivery of goods without obtaining negotiable receipts; negotiation of receipt for mortgaged goods [Repealed].

Repealed.

(Dec. 1, 1982, D.C. Law 4-164, § 602(aaa)-(fff), 29 DCR 3976.)

Prior Codifications. — 1981 Ed., §§ 22-3701 to 22-3706.

Legislative history of Law 4-164. — Law 4-164, the "District of Columbia Theft and White Collar Crimes Act of 1982," was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the

Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

CHAPTER 51. LIBEL; BLACKMAIL; EXTORTION; THREATS [REPEALED].

Sec.

22-5101 to 22-5106. [Repealed].

§§ 22-5101 to 22-5106. Libel (Penalty; publication; justification); false charges of unchastity; blackmail; intent to commit extortion by communication of illegal threats and demands [Repealed].

Repealed.

(Dec. 1, 1982, D.C. Law 4-164, § 602(hh)-(mm), 29 DCR 3976.)

Prior Codifications. — 1981 Ed., §§ 22-2301 to 22-2306.

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the

Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

CHAPTER 52. MISCELLANEOUS PROVISIONS [REPEALED].

Sec.

22-5202 to 22-5215. [Repealed].

22-5201. [Omitted].

§ 22-5201. “Gift enterprise” defined [Omitted].

Omitted.

(Leg. Assem., Aug. 23, 1871, p. 96, ch. 69, § 21.)

Editor’s notes. — This section was omitted because §§ 22-5202 and 22-5203 were repealed in 1961 making § 22-5201 obsolete.

§§ 22-5202, 22-5203. Gift enterprise — Prohibited; penalty [Repealed].

Repealed.

(Sept. 21, 1961, 75 Stat. 565, Pub. L. 87-267, § 1.)

Prior Codifications. — 1981 Ed., §§ 22-3402, 22-3403.

§§ 22-5204 to 22-5206. Kosher meat — Sale; labeling; signs displayed where kosher and nonkosher meats sold; definitions; penalties [Repealed].

Repealed.

(Dec. 1, 1982, D.C. Law 4-164, § 602§§ -(uu), 29 DCR 3976.)

Prior Codifications. — 1981 Ed., §§ 22-3404 to 22-3406.

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133 which was referred to the Committee on the

Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

§§ 22-5207, 22-5208. Limitation of hours of daily service for laborers and mechanics on public works; penalty for violation of § 22-5207 [Repealed].

Repealed.

(Aug. 13, 1962, 76 Stat. 360, Pub. L. 87-581, § 203.)

Prior Codifications. — 1981 Ed., §§ 22-3407, 22-3408.

§§ 22-5209 to 22-5213. Mislabeling potatoes (Prohibited; sign to show grade; exception for seed potatoes; penalties); procuring enlistment of criminals [Repealed].

Repealed.

(Dec. 1, 1982, D.C. Law 4-164, § 602(vv)-(zz), 29 DCR 3976.)

Prior Codifications. — 1981 Ed., §§ 22-3409 to 22-3413. legislative history of D.C. Law 4-164, see Historical and Statutory Notes following § 22-

Legislative history of Law 4-164. — For 3404.

§ 22-5214. Use of the flag for advertising purposes; mutilation of the flag. [Repealed].

Repealed.

(July 30, 1947, 61 Stat. 646, ch. 389, § 2.)

Prior Codifications. — 1981 Ed., § 22-3414.

§ 22-5215. Discrimination by theatre proprietors against persons wearing uniform of armed services prohibited. [Repealed].

Repealed.

(June 25, 1948, 62 Stat. 864, ch. 645, § 21.)

Prior Codifications. — 1981 Ed., § 22-3415.

TITLE 23. CRIMINAL PROCEDURE.

Chapter

1. General Provisions.
3. Indictments and Informations.
5. Warrants and Arrests.
7. Extradition and Fugitives from Justice.
9. Fresh Pursuit.
11. Professional Bondsmen.
13. Bail Agency [Pretrial Services Agency] and Pretrial Detention.
15. Out-of-State Witnesses.
17. Death Penalty [Repealed].
19. Crime Victims' Rights.

CHAPTER 1. GENERAL PROVISIONS.

- | | |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Sec. | Sec. |
| 23-101. Conduct of prosecutions. | 23-109. Powers of investigators assigned to United States Attorney. |
| 23-102. Abandonment of prosecution; enlargement of time for taking action. | 23-110. Remedies on motion attacking sentence. |
| 23-103. Statements prior to sentence. | 23-111. Proceedings to establish previous convictions. |
| 23-103a. [Repealed]. | 23-112. Consecutive and concurrent sentences. |
| 23-104. Appeals by United States and District of Columbia. | 23-112a. Notice at sentencing of child support modification. |
| 23-105. Challenges to jurors. | 23-113. Limitations on actions for criminal violations. |
| 23-106. Witnesses for defense; fees. | 23-114. Corroboration of a child witness' testimony not required. |
| 23-107. Discharge or acquittal of joint defendant during trial in order to be witness. | |
| 23-108. Depositions. | |

§ 23-101. Conduct of prosecutions.

(a) Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the Corporation Counsel for the District of Columbia [Attorney General for the District of Columbia] or his assistants, except as otherwise provided in such ordinance, regulation, or statute, or in this section.

(b) Prosecutions for violations of section 6 of the Act of July 29, 1892 (D.C. Official Code, sec. 22-1307), relating to disorderly conduct, and for violations of section 9 of that Act (D.C. Official Code, sec. 22-1312), relating to lewd, indecent, or obscene acts, shall be conducted in the name of the District of Columbia by the Corporation Counsel [Attorney General for the District of Columbia] or his assistants.

(c) All other criminal prosecutions shall be conducted in the name of the United States by the United States attorney for the District of Columbia or his assistants, except as otherwise provided by law.

(d) An indictment or information brought in the name of the United States may include, in addition to offenses prosecutable by the United States, offenses

prosecutable by the District of Columbia, and such prosecution may be conducted either solely by the Corporation Counsel [Attorney General for the District of Columbia] or his assistants or solely by the United States attorney or his assistants if the other prosecuting authority consents.

(e) Separate indictments or informations, or both, charging offenses prosecutable by the District of Columbia and by the United States may be joined for trial if the offenses charged therein could have been joined in the same indictment. Such prosecution may be conducted either solely by the Corporation Counsel [Attorney General for the District of Columbia] or his assistants or solely by the United States attorney or his assistants if the other prosecuting authority consents.

(f) If in any case any question shall arise as to whether, under this section, the prosecution should be conducted by the Corporation Counsel [Attorney General for the District of Columbia] or by the United States attorney, the presiding judge shall forthwith, either on his own motion or upon suggestion of the Corporation Counsel [Attorney General for the District of Columbia] or the United States attorney, certify the case to the District of Columbia Court of Appeals, which court shall hear and determine the question in a summary way. In every such case the defendant or defendants shall have the right to be heard in the District of Columbia Court of Appeals. The decision of such court shall be final.

(July 29, 1970, 84 Stat. 604, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Adult protective services, penalties and enforcement, see § 7-1912.

Alcoholic beverages provisions, penalties for violations, see § 25-831.

Cable television provisions, prosecutions for violations, see § 34-1250.

Corporation Counsel, duties, see § 1-301.111.

Funeral services, prosecutions for violations, see § 3-418.

Hazardous waste management provisions, penalties for violations, see § 8-1311.

Indigents, representation, see §§ 2-1602 and 11-2601.

Insurance companies, prosecutions for violations of provisions governing, see § 47-2605.

Medicaid Provider Fraud Prevention Act, prosecution of violations, see § 4-804.

Public passenger vehicles, penalties for unlawful conduct on, see § 35-253.

Wastewater control law, penalties and prosecutions under, see § 8-105.14.

Water pollution control provisions, penalties and prosecutions for violation, see § 8-10

Prior Codifications. — 1981 Ed., § 23-101. 1973 Ed., § 23-101.

Editor's notes. — Section 34 of D.C. Law 15-354 provided that Title 23 is designated Title 23 of the District of Columbia Official Code.

CASE NOTES

ANALYSIS

Certification.

Controlled substances offenses.

Delinquency.

Disorderly conduct.

Firearms violations.

Indecency.

Joinder of local and federal offenses.

Jurisdiction of court.

Property offenses.

Prosecutorial authority, generally.

Single sovereign.

Certification.

Where question as to proper prosecuting authority as between District of Columbia Corporation Counsel and United States Attorney is raised, the court must certify question to Court of Appeals for District of Columbia, and Municipal Court of Appeals was required to reverse action of Municipal Court in dismissing informations brought by Corporation Counsel after ruling that United States Attorney was proper prosecuting authority and the court would remand with instructions to reinstate informations and to certify questions to Court of Ap-

peals. D.C. Code 1951, §§ 22-109, 22-3112, 23-101. *District of Columbia v. Moody*, 175 A.2d 782, 1961 D.C. App. LEXIS 290 (Cr.App. 1961).

Controlled substances offenses.

The District of Columbia lacks standing to intervene in a criminal case on the defendant's behalf concerning pretrial detention after an alleged violation of the Uniform Controlled Substances Act. *United States v. Sweetney*, 113 WLR 2517 (Super. Ct.).

Delinquency.

Evidence obtained where the statute has not been complied with and where no exception applies generally may be suppressed on motion by a defendant with standing to challenge the violation. *District of Columbia v. Mancoso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

Required use of government prosecutors in criminal-juvenile context did not indicate a congressional intent to require such prosecutors for civil commitments, let alone to preclude private litigation in the commitment field. D.C. Code §§ 16-2305, 21-501 et seq., 23-101. In re *Kossow*, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. D.C. Code §§ 16-2301(7), 16-2318, 23-101(f). In re *M.W.F.*, 312 A.2d 302, 1973 D.C. App. LEXIS 396 (1973).

Disorderly conduct.

Under statute which restricts corporation counsel's authority to cases in which punishment is fine only or imprisonment not to exceed one year, corporation counsel lacked authority to initiate prosecution for disorderly conduct which was punishable by fine of not more than \$250 or imprisonment of not more than 90 days, or both. D.C. Code §§ 22-1107, 23-101, 23-102. *District of Columbia v. Grimes*, 404 F.2d 1337, 1968 U.S. App. LEXIS 7539 (C.A.D.C. 1968).

Trial court should have ordered District's Corporation Counsel to respond to arrestee's motion to seal arrest record, where record affirmatively showed that Assistant Corporation Counsel no-papered arrestee's disorderly conduct charge, and trial court should have recognized that Corporation Counsel, rather than United States Attorney, prosecutes disorderly conduct charges in District. *District of Columbia v. Houston*, 842 A.2d 667, 2004 D.C. App. LEXIS 55 (2004).

United States, through United States attorney, and not the District of Columbia, through the corporation counsel, is proper prosecutive authority for alleged violation of statute prescribing maximum fine of \$500, or imprison-

ment for not more than six months, or both, for disorderly and unlawful conduct in or about public buildings and public grounds belonging to the United States within the district. D.C. Code §§ 22-1107, 22-3111, 23-101(a, f). *District of Columbia v. Ackerman*, 283 A.2d 24, 1971 D.C. App. LEXIS 210 (1971).

Informations charging disorderly conduct were properly prosecuted by the Corporation Counsel on behalf of the District of Columbia even though the informations charged an offense punishable by a fine or by imprisonment, or both. D.C. Code 1961, §§ 22-109, 22-1121, 23-101. *Smith v. District of Columbia*, 219 A.2d 842, 1966 D.C. App. LEXIS 181 (App. 1966), vacated by 387 F.2d 233, 128 U.S. App. D.C. 275, 1967 U.S. App. LEXIS 5491 (1967).

Firearms violations.

In view of 1972 letter from corporation counsel granting standing permission for United States attorney to prosecute violations of police regulations prohibiting possession of unregistered firearms and possession of ammunition therefor if such charges accompany a charge of violating statute prohibiting the carrying of a pistol without a license, the corporation counsel is not required in each case to give formal consent on the record for the United States attorney to prosecute on the regulatory charges. D.C. Code §§ 22-3204, 23-101(d). *Copeng v. United States*, 353 A.2d 305, 1976 D.C. App. LEXIS 491 (1976).

Indecency.

Prosecution for violation of statute rendering it unlawful to invite, entice or persuade any person fifteen years of age or over for purpose of prostitution or any other immoral or lewd purpose, should be conducted by United States attorney in name of and for benefit of United States, since offense is punishable by both fine and imprisonment. D.C. Code 1951, §§ 22-2701 et seq., 23-101, 23-102; Act July 29, 1892, §§ 7, 18, 27 Stat. 322. *U.S. v. Strothers*, 228 F.2d 34, 1955 U.S. App. LEXIS 3640 (C.A.D.C. 1955).

Statute establishing offense of soliciting for purposes of prostitution is not penal statute in the nature of a police or municipal ordinance or regulation, and thus, prosecutions under statute are to be conducted by United States and not by corporation counsel for District of Columbia. D.C. Code 1981, §§ 22-2701, 23-101. In re *Prosecution of Monaghan*, 690 A.2d 476, 1997 D.C. App. LEXIS 31 (1997).

Joinder of local and federal offenses.

United States Attorney had authority under District of Columbia law to prosecute codefendant for local offense of aiding and abetting defendant's possession of unregistered firearm due to joinder of codefendant and defendant who was charged with federal offenses; although statute provided that corporate counsel

for District of Columbia shall bring charges involving local offenses, statute authorized United States Attorney to prosecute local offense with consent of corporate counsel when local offense is joined with federal offense. D.C. Code 1981, § 23-101(a, d). *United States v. Johnson*, 46 F.3d 1166, 1995 U.S. App. LEXIS 2209 (C.A.D.C. 1995), remanded without opinion by 172 F.3d 921, 335 U.S. App. D.C. 320, 1998 U.S. App. LEXIS 38391 (1998).

Jurisdiction of court.

District court had jurisdiction over prosecution of defendant charged with failing to make tax returns and to pay federal and District of Columbia taxes, since District of Columbia charges were properly joined in same information as federal offenses, and Office of Attorney General authorized United States Attorney to bring charges. *United States v. Gray*, 723 F.Supp.2d 82, 2010 U.S. Dist. LEXIS 69551 (2010).

Plea agreement with the United States Attorney, under which the government would not pursue any charges concerning one particular incident, did not preclude superior court from vindicating its authority to enforce a civil protection order (CPO) against the defendant by a order of criminal contempt in connection with the same incident; only the United States and the defendant were bound by the plea agreement, and it was not objectively reasonable for the defendant to expect that plea agreement would shield him by taking away the inherent power and authority of the superior court to enforce its CPOs through the sanction of criminal contempt. *In re Robertson*, 19 A.3d 751, 2011 D.C. App. LEXIS 305 (2011).

Even assuming that statutory provision allowing prosecutorial authority between corporation counsel and United States attorney prescribed role for United States attorney, that fact would raise only procedural question without effect upon court's jurisdiction over matter, and therefore, corporation counsel's involvement in contempt proceedings did not deprive court of jurisdiction to act. D.C. Code 1981, § 23-101. *In re Marshall*, 467 A.2d 979, 1983 D.C. App. LEXIS 507 (1983).

Property offenses.

United States Attorney for District of Columbia rather than corporation counsel for District was the attorney who should prosecute offense of destroying private property in violation of the District of Columbia Code, where the offense was punishable by fine not to exceed \$100, or imprisonment not to exceed six months, or both. D.C. Code 1961, §§ 22-3112, 23-101. *District of Columbia v. Moody*, 304 F.2d 943, 1962 U.S. App. LEXIS 4733 (C.A.D.C. 1962).

Corporation counsel, rather than United States attorney, was appropriate authority for prosecution of defendants for tampering with a parked vehicle in violation of police regulations of the District of Columbia. D.C. Code §§ 23-101, 23-101(f). *District of Columbia v. Smith*, 329 A.2d 128, 1974 D.C. App. LEXIS 319 (1974).

Prosecutorial authority, generally.

District of Columbia Council did not have authority, under provision in Congressional statute dividing prosecutorial authority that assigned prosecutions for violations of police or municipal ordinances when the maximum punishment was a fine only or imprisonment not exceeding one year to the Office of the Attorney General for the District of Columbia (OAG), to assign prosecutions for violation of the false claims statute passed by Council to the OAG rather than the United States Attorney's Office for the District of Columbia (USAO), as the false claims statute authorized a punishment of fine and imprisonment, and the penalty of up to \$100,000 per violation and up to one year in jail per violation was not a punishment in the nature of one that flowed from a violation of something akin to a police or municipal ordinance. *In re Prosecution of Crawley*, 978 A.2d 608, 2009 D.C. App. LEXIS 354 (2009).

Generally, prosecutor is not allowed to advance new arguments in rebuttal; however, trial court has some discretion to allow broader rebuttal argument. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Primary purpose of rule that generally prosecutor is not allowed to advance new arguments in rebuttal is to protect the defense from surprise. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Prosecutor did not engage in improper rebuttal argument by focusing on matters brought out in opening argument and discussed by defendant's counsel. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Prosecutor's brief comments allegedly mischaracterizing defense argument about witness in discussing reasonable doubt did not prejudice defendants, so as to warrant reversal. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Statute, which provides that corporation counsel shall conduct prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in nature of police or municipal regulations, where maximum punishment is a fine only, or imprisonment not exceeding one year, gives prosecutorial authority to the corporation counsel as to all municipal ordinances and regulations, irrespective of the prescribed punishment. D.C. Code § 23-101(a). *District of Columbia v. Smith*, 329 A.2d 128, 1974 D.C. App. LEXIS 319 (1974).

Single sovereign.

Violations of the District of Columbia Code are violations of the United States Code and are all crimes against a single sovereign namely, the United States, and the District of

Columbia Court Reform and Criminal Procedure Act did not vitiate the essential character of the District of Columbia as an arm of the sovereign United States. D.C. Code § 11-101 et seq. *Goode v. Markley*, 603 F.2d 973, 1979 U.S. App. LEXIS 13434 (C.A.D.C. 1979), writ of certiorari denied by 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768, 1980 U.S. LEXIS 798 (1980).

Where prisoner is serving two consecutive sentences, existence of the second sentence is not equivalent to a detainer lodged by another sovereign under the Interstate Agreement on Detainers for purposes of regulation providing that detainer lodged by state against a federal prisoner is not basis for denial of parole. D.C. Code § 24-701, art. III; Interstate Agreement on Detainers Act, § 2, art. III, 18 U.S.C. *Goode v. Markley*, 603 F.2d 973, 1979 U.S. App. LEXIS 13434 (C.A.D.C. 1979), writ of certiorari denied by 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768, 1980 U.S. LEXIS 798 (1980).

Where defendant was convicted in the United States District Court for the District of Columbia for possession of narcotics and thereafter was convicted in the Superior Court for the District of Columbia of armed robbery, and the armed robbery sentence was imposed to run consecutively to the narcotics sentence, she need not be granted a parole hearing until she has served one-third of the aggregate of the maximum of the two sentences, since the two sentences were imposed by the same sovereign, and the District of Columbia did not acquire the attributes of a separate sovereignty by virtue of its being party to the Interstate Agreement on Detainers. 18 U.S.C. § 4205(a, h); D.C. Code § 24-701; Interstate Agreement on Detainers Act, § 1 et seq., 18 U.S.C. *Goode v. Markley*, 603 F.2d 973, 1979 U.S. App. LEXIS 13434 (C.A.D.C. 1979), writ of certiorari denied by 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768, 1980 U.S. LEXIS 798 (1980).

Provisions of Interstate Agreement on Detainers Act [Interstate Agreement on Detainers Act, § 1 et seq., 18 U.S.C.App.] apply to detainees lodged against federal prisoners based upon any District of Columbia code charge tried in Superior Court, whether prosecuted by United States attorney or District of Columbia Corporation Council. *United States v. Bailey*, 495 A.2d 756, 1985 D.C. App. LEXIS 437 (1985).

§ 23-102. Abandonment of prosecution; enlargement of time for taking action.

If any person charged with a criminal offense shall have been committed or held to bail to await the action of the grand jury and within nine months thereafter the grand jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment, the prosecution of such

charge shall be deemed to have been abandoned and the accused shall be set free or his bail discharged, as the case may be: but, the court having jurisdiction to try the offense for which the person has been committed, when practicable and upon good cause shown in writing and upon due notice to the accused, may from time to time enlarge the time for the taking action in such case by the grand jury.

(July 29, 1970, 84 Stat. 605, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-102. 1973 Ed., § 23-102.

CASE NOTES

ANALYSIS

Commencement of time period.
Construction and application.
Dismissal.
Speedy trial.
Tolling of time period.

Commencement of time period.

Nine-month period set forth in statute and rule requiring that the defendant be set free if the grand jury had not taken action in the case by returning an indictment within nine-months of the time the defendant was committed or held to bail to await the action of the grand jury did not commence to run when the finding of probable cause was made at the defendant's preliminary hearing, but commenced to run when the defendant was initially detained by the commissioner, and since the grand jury did not act in the case until the day following the expiration of the nine-month period, defendant was entitled to be released. *Criminal Rule 48(c)*; D.C. Code 1981, § 23-102. *Price v. United States*, 476 A.2d 644, 1984 D.C. App. LEXIS 386 (1984).

Construction and application.

"Held to bail" apparently signifies not the status of being held without bail or in the absence of the ability to make bond, but rather of being released after posting a money bond. *United States v. Goldston*, 118 WLR 1013 (Super. Ct. 1990).

Dismissal.

Where Court of General Sessions of the District of Columbia granted motion to dismiss disorderly conduct charge on several grounds but subsequently vacated dismissal with respect to jurisdictional ground only and question of prosecutorial authority was certified to Court of Appeals, any action Court of Appeals might take on certified question could not alter dismissal of charges and hence certificate was dismissed. D.C. Code §§ 22-1107, 23-102. Dis-

trict of Columbia v. Barry, 387 F.2d 860, 1967 U.S. App. LEXIS 4367 (C.A.D.C. 1967).

Speedy trial.

Defendant did not show a violation of his Sixth Amendment right to a speedy trial for assault with intent to kill while armed (AWIKWA) and other offenses; delay between defendant's arrest and trial was a little over six months, the delay resulted in large part from two requests by the government for additional time to complete its investigation, defense counsel said at a hearing on the date of the government's request for a second extension that he was satisfied with the government's representations that it needed additional time to complete its investigation, and defendant failed to explain exactly how his defense was allegedly hampered by the delay. *Ferguson v. United States*, 977 A.2d 993, 2009 D.C. App. LEXIS 341 (2009).

Delay of approximately 27 months between defendant's arrest and start of murder trial did not violate his speedy trial rights; government's desire for joinder of all defendants in same proceeding was balanced against speedy trial interest, weight given to defendant's assertion of speedy trial was diminished by his delay in written assertion and his decision not to object to continuance, defendant made no attempt to allege any particularized harm, and defendant's argument relating to impairment of defense lacked specificity since defendant had witnesses at trial but chose not to present them and did not identify potential witness whom he may have lost because of delay. *Hartridge v. United States*, 896 A.2d 198, 2006 D.C. App. LEXIS 142 (2006), writ of certiorari denied by 549 U.S. 1272, 127 S. Ct. 1503, 167 L. Ed. 2d 242, 2007 U.S. LEXIS 2963, 75 U.S.L.W. 3473 (2007).

There are limitations on the authority of the court to dismiss for want of prosecution: such authority may not be exercised in an arbitrary, fanciful, or clearly unreasonable manner, and the court may dismiss with prejudice for want of prosecution only when it has concluded that

the defendant's constitutional right to a speedy trial has been violated. *District of Columbia v. Cruz*, 828 A.2d 181, 2003 D.C. App. LEXIS 433 (2003).

There was no assertion of speedy trial violation by defendant at trial for operating a motor vehicle without a permit and operating a motor vehicle after revocation, and thus trial court could not dismiss case for want of prosecution with prejudice; general assertion of constitutional rights that duty attorneys assigned in Traffic Branch was not sufficient to comply with requirement that defendant make specific assertion of speedy trial violation. *District of Columbia v. Cruz*, 828 A.2d 181, 2003 D.C. App. LEXIS 433 (2003).

There was insufficient prejudice to warrant conclusion that defendant's right to speedy trial had been violated; only prejudice defendant claimed was that he suffered anxiety concerning trial during seven weeks between arrest and trial, and had suffered anxiety since case was appealed, but defendant did not claim that his defense was impaired by the seven-week delay of trial nor any claim regarding incarceration, defendant's anxiety was not sufficient prejudice to warrant dismissal based on speedy

trial violation, and period between dismissal and reindictment could not be considered in evaluating speedy trial claim. *District of Columbia v. Cruz*, 828 A.2d 181, 2003 D.C. App. LEXIS 433 (2003).

Defendants were not denied a speedy trial by reasons of the fact that their trial did not commence until 13 months after their arrest, where approximately eight months of the delay was occasioned by the grand jury's consideration of the evidence, where there was no inordinate delay caused by the court or by the prosecution, and where the trial was reset to an earlier date, rather than the original date, because of defendants' motions to dismiss for lack of a speedy trial. D.C. Code § 23-102. *Adams v. United States*, 379 A.2d 961, 1977 D.C. App. LEXIS 264 (1977).

Tolling of time period.

The provisions of this section and Super. Ct. Crim. Rule 48(c) requiring the release of a defendant held in custody, or placed on conditions of release, and not indicted within nine months of presentment, are tolled for any preindictment period during which defendant is a fugitive. *United States v. Goldston*, 118 WLR 1013 (Super. Ct. 1990).

§ 23-103. Statements prior to sentence.

(a) Except as provided in subsection (b) of this section, before imposing sentence the court may disclose to the defendant's counsel and to the prosecuting attorney, but not to one and not the other, all or part of any pre-sentencing report submitted to the court in the case. The court also prior to imposing sentence shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. At any time when the defendant or his counsel addresses the court on the sentence to be imposed, the prosecuting attorney shall, if he wishes, have an equivalent opportunity to address the court and to make a recommendation to the court on the sentence to be imposed and to present information in support of his recommendation. Such information as the defendant or his counsel or the prosecuting attorney may present shall at all times be subject to the applicable rules of mutual discovery.

(b) When a victim elects to file a victim impact statement pursuant to § 23-103a, the court shall disclose the victim impact statement portion of the presentence report at a reasonable time prior to imposing sentence to the defendant's counsel and to the prosecuting attorney.

(July 29, 1970, 84 Stat. 605, Pub. L. 91-358, title II, § 210(a); May 10, 1989, D.C. Law 7-229, § 2(a), 35 DCR 6155.)

Cross references. — Aliens, sentencing, see § 16-713.

Prior Codifications. — 1981 Ed., § 23-103.

1973 Ed., § 23-103.

Legislative history of Law 7-229. — For legislative history of D.C. Law 7-229, see His-

torical and Statutory Notes following § 23-103a.

CASE NOTES

ANALYSIS

Bias and prejudice.
Harmless error.
Hearing.
Prosecutor's statement.
Waiver.

Bias and prejudice.

Government's remarks at sentencing concerning numerous drug convictions against defendant, to effect that defendant should receive "a significant degree of incarceration," did not prejudice defendant, as necessary for defendant to show "manifest injustice" required to set aside his guilty pleas; government was expressly allowed by statute and rule to explain its allocution, during plea hearing, court specifically pointed out to defendant that he could receive a sentence greater than what government had agreed to recommend, and the court knew that government had capped its allocution at four years of total prison time. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

Government's remarks at sentencing concerning numerous drug convictions against defendant, to effect that defendant should receive "a significant degree of incarceration," did not constitute breach of provision of plea agreement in which government agreed to limit its allocution to four years' incarceration, as government, in making these remarks, was simply explaining its sentencing recommendation to the court, which it had a right to do. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

Because even an illegal alien has a right to due process, a court imposing a sentence in a criminal case may not treat the defendant more harshly than any other defendant solely because of his nationality or alien status; however, this does not mean that a sentencing court, in deciding what sentence to impose, must close its eyes to the defendant's status as an illegal alien and his history of violating the law, including any law related to immigration. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Test of whether sentencing judge's comments at sentencing hearing regarding ex parte conversations about defendant created appearance of impropriety is whether statements could lead objective observer reasonably to question judge's impartiality due to appearance that considered ex parte communication concerning pending or impending proceeding. ABA Code of Jud. Conduct, Canon 3, subds. A(4), C(1); Crim-

inal Rule 32(b)(3); D.C. Code 1981, § 23-103(b). *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Defendant's opportunity to be heard on subject of eligibility for sentencing under addict exception of Controlled Substances Act may be fully satisfied without a hearing where proffer of facts of offense make hearing unnecessary or trial judge finds reliable information in presentence report of defendant's ineligibility or unlikely prospects for likely rehabilitation, notwithstanding any of defendant's challenges to report. *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Harmless error.

Trial court error in denying defendant opportunity to present affirmative defense under senior citizen enhancement penalty at time of sentencing was harmless, where nothing in record suggested that defendant's sentence would have differed had court found defendant reasonably believed victim was not 60 when he robbed her, and, at allocution, defendant had denied robbing victim and carrying knife with intent to do violent harm to anybody. D.C. Code 1981, § 22-3901. *Fields v. United States*, 547 A.2d 138, 1988 D.C. App. LEXIS 156 (1988).

Hearing.

When the government allocutes at a sentencing, it is allowed to make both a recommendation to the court on the sentence to be imposed and to present information in support of its recommendation. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

In determining whether withdrawal of a plea agreement would be fair and just, the court applies three factors: whether the defendant has asserted his or her legal innocence, the length of delay between entry of the guilty plea and the defendant's expression of a desire to withdraw it, and whether the defendant had the benefit of competent counsel at all relevant times. *Byrd v. United States*, 801 A.2d 28, 2002 D.C. App. LEXIS 304 (2002).

Sentencing court did not exceed its authority by telling prosecutor to take all necessary steps to effect defendant's deportation after he had served his sentence on his guilty pleas to credit card fraud, receiving stolen property, and one count of failure to appear in court; the court simply reminded prosecutor of an obligation that he already knew about, it was not an "order" from the court to assure his deportation, it was not part of his sentence, and it appeared that the Immigration and Naturalization Service (INS) had already lodged a

detainer against defendant before he was sentenced. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

A motion to withdraw a guilty plea made before sentence should be given favorable consideration if for any reason the granting of the privilege seems fair and just. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Three factors are particularly relevant in considering a pre-sentence motion to withdraw a guilty plea: (1) whether the defendant has asserted his legal innocence; (2) the length of delay between the entry of the plea and the motion to withdraw it; and (3) whether the defendant had the full benefit of competent counsel at all times. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Trial judge presiding over defendant's motion to vacate sentence and withdraw guilty plea should have held evidentiary hearing as to whether defendant acted in self-defense when he shot victim; self-defense claim stated in motion was not a "one line statement" as trial court found, and sentencing transcript revealed that when defendant and his attorney apparently had attempted to explain at sentencing that defendant had self-defense claim, trial judge cut them off. D.C. Code 1981, § 23-110. *Johnson v. United States*, 597 A.2d 917, 1991 D.C. App. LEXIS 276 (1991).

There is no bar to trial court, if so disposed, granting hearing with respect to motion to vacate sentence and withdraw guilty plea. D.C. Code 1981, § 23-110. *Johnson v. United States*, 597 A.2d 917, 1991 D.C. App. LEXIS 276 (1991).

Criminal defendant's right to be present at time sentence is imposed, and to be heard as to what the punishment shall be, is a fundamental one which implicates the due process clause. U.S. Const. Amend. 5. *Warrick v. United States*, 551 A.2d 1332, 1988 D.C. App. LEXIS 225 (1988).

Defendant seeking sentencing under addict exception of Controlled Substances Act must be given fair opportunity to demonstrate eligibility and to persuade judge that his addiction and offense make inappropriate an imposition of

mandatory minimum sentence. *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Hearing on defendant's eligibility for sentencing under addict exception of Controlled Substances Act may be necessary where defendant's prima facie proffer is inconsistent with material portions of presentence report or government's representation or if presentence report or other material before court lacks information necessary for proper judicial determination. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Trial judge who concluded, based on reading material submitted by defense counsel and presentence report, that mandatory minimum sentence was to be applied and who said that it was unnecessary for defendant to testify because he would not believe defendant and cut off defense counsel who tried to respond regarding defendant's prior behavior on probation, failed to afford defendant fair opportunity to meet challenges to his eligibility for sentencing under addict exception of Controlled Substances Act. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Prosecutor's statement.

Prosecutor's description, during sentencing allocution, of defendant's pattern of assaults or threats did not breach term of plea agreement that prosecutor would recommend eight-year sentencing cap for assault with intent to kill; prosecutor had not waived allocution, and was allowed to make both recommendation on sentence to be imposed and to present information in support of sentence, especially in light of defendant's request for downward departure sentence between four to eight years. *Perrow v. United States*, 947 A.2d 54, 2008 D.C. App. LEXIS 222 (2008).

Waiver.

Defendant seeking to be sentenced under addict exception of Controlled Substances Act must alert trial judge prior to imposition of sentence that he seeks to be sentenced under addict exception; failure to do so will constitute waiver, and defendant cannot be sentenced pursuant to addict exception unless trial court acts sua sponte. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

§ 23-103a. Rights of victims of crime. [Repealed].

Repealed.

(May 10, 1989, D.C. Law 7-229, § 2(b), 35 DCR 6155; Aug. 20, 1994, D.C. Law

10-151, §§ 101(f), 501, 41 DCR 2608; June 8, 2001, D.C. Law 13-301, § 303, 47 DCR 7039.)

Prior Codifications. — 1981 Ed., § 23-103a.

Emergency legislation. — For temporary amendment of section, see §§ 101(f) and 501 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 7-229. — Law 7-229, the “Victim’s Rights Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 28, 1988, and July 12, 1988, respectively. Signed by the Mayor on August 1, 1988, it was assigned Act No. 7-236 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-151. — Law 10-151, the “Omnibus Criminal Justice Reform Amendment Act of 1994,” was introduced in

Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Legislative history of Law 13-301. — Law 13-301, the “Senior Protection Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-297, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-396 and transmitted to both Houses of Congress for its review. D.C. Law 13-301 became effective on June 8, 2001.

§ 23-104. Appeals by United States and District of Columbia.

(a)(1) The United States or the District of Columbia may appeal an order, entered before the trial of a person charged with a criminal offense, which directs the return of seized property, suppresses evidence, or otherwise denies the prosecutor the use of evidence at trial, if the United States attorney or the Corporation Counsel [now Attorney General for the District of Columbia] conducting the prosecution for such violation certifies to the judge who granted such motion that the appeal is not taken for purpose of delay and the evidence is a substantial proof of the charge pending against the defendant.

(2) A motion for return of seized property or to suppress evidence shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion.

(b) The United States or the District of Columbia may appeal a ruling made during the trial of a person charged with a criminal offense which suppresses or otherwise denies the prosecutor the use of evidence on the ground that it was invalidly obtained, if the United States attorney or the Corporation Counsel [now Attorney General for the District of Columbia] conducting the prosecution for such violation certifies to the judge who made the ruling that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of the charge being tried against the defendant. The trial court shall adjourn the trial until the appeal shall be resolved; except that, if the decision on appeal has not been rendered within the ninety-six-hour period following the adjournment of the trial, the trial shall resume on the next day of regular court business following the expiration of the ninety-six-hour period, and the appeal shall be deemed void and without effect.

(c) The United States or the District of Columbia may appeal an order dismissing an indictment or information or otherwise terminating a prosecu-

tion in favor of a defendant or defendants as to one or more counts thereof, except where there is an acquittal on the merits.

(d) The United States or the District of Columbia may appeal any other ruling made during the trial of a person charged with an offense which the United States attorney or the Corporation Counsel [now Attorney General for the District of Columbia] certifies as involving a substantial and recurring question of law which requires appellate resolution. Such an appeal may be taken only during the trial and only with leave of the court. The trial court shall adjourn the trial until the appeal shall be resolved; except that, if the decision on appeal has not been rendered within the ninety-six-hour period following the adjournment of the trial, the trial shall resume on the next day of regular court business following the expiration of the ninety-six-hour period, and the appeal shall be deemed void and without effect.

(d-1) In a criminal or delinquency case, the United States or the District of Columbia may appeal an order of a trial court granting a new trial after verdict or judgment, as to any one or more counts, or any part thereof, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

(d-2) In a criminal or delinquency case, the United States or the District of Columbia may appeal a decision or order entered by the trial court granting the release of a person charged with, or convicted or adjudicated delinquent of an offense, the denial of a motion for revocation of release, or modification of the conditions of release.

(e) Any appeal taken pursuant to this section either before or during trial shall be expedited. If an appeal is taken pursuant to subsection (b), (d), (d-1), or (d-2) during trial, the appellate court shall hear argument on such appeal within forty-eight hours of the adjournment of the trial pursuant to that subsection shall dispense with any requirement of written briefs other than the supporting materials previously submitted to the trial court, shall render its decision within forty-eight hours of argument on appeal, and may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(f) Pending the prosecution and determination of an appeal taken pursuant to this section, the defendant shall be detained or released in accordance with Chapter 13 of this title and a juvenile respondent shall be detained or released in accordance with Chapter 23 of Title 16.

(July 29, 1970, 84 Stat. 606, Pub. L. 91-358, title II, § 210(a); Apr. 24, 2007, D.C. Law 16-306, § 224(a), 53 DCR 8610.)

Section references. — This section is referred to in § 11-721.

Prior Codifications. — 1981 Ed., § 23-104. 1973 Ed., § 23-104.

Effect of amendments. — D.C. Law 16-306 added subsecs. (d-1) and (d-2); in subsec. (e), substituted "subsection (b), (d), (d-1), or (d-2)" for "subsection (b) or (d)"; and rewrote subsec.

(f), which had read as follows: "(f) Pending the prosecution and determination of an appeal taken pursuant to this section, the defendant shall be detained or released in accordance with chapter 13 of this title."

Emergency legislation. — For temporary (90 day) amendment of section, see § 224(a) of Omnibus Public Safety Emergency Amend-

ment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 224(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 224(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 224(a) of Omnibus Public Safety

Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 16-306. — Law 16-306, the “Omnibus Public Safety Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

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Certification by prosecutor.

Generally, the Court of Appeals does not look behind certifications made by prosecutors pursuant to the statute that permits the District to appeal a pre-trial order of the trial court in a criminal case that denies the prosecutor the use of evidence at trial that is a substantial proof of the charge pending against the defendant. In re F.K., 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

Government's failure to certify, prior to filing the notice of appeal, that the appeal is not taken for the purpose of delay and the evidence is a substantial proof of the charge is a filing irregularity, rather than a jurisdictional defect, and may, but need not, warrant dismissal of the

appeal. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

The government's failure to file a fully conforming certificate until five days after oral argument did not warrant dismissal of its appeal of suppression order in juvenile delinquency case; the notice of appeal itself contained a statement that the appeal was not taken for purposes of delay, and the statute requiring the certificate has been fully complied with. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

When filed, the government's certificate that its appeal is not taken for the purpose of delay and the evidence is a substantial proof of the charge is conclusive and not subject to substantive review by the appellate court. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

The government should make every effort to carefully follow the precise statutory requirements for its appeal, including that the certification be made by the attorney conducting the prosecution and that it be made to the judge who granted such motion. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

The requirement of a government certification that its appeal is not taken for the purpose of delay and the evidence is a substantial proof of the charge is jurisdictional in the sense that a conforming certificate must be filed at some point prior to any binding decision. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Prosecutor's certificate of no purposeful delay resulting from appeal and substantial proof of charge pending against defendant is not subject to attack so as to defeat appeal and any impact appeal may have on other rights of accused must await trial court resolution and if necessary be renewed in event of conviction. D.C. Code 1981, § 23-104(a)(1). United States v. Jackson, 441 A.2d 937, 1982 D.C. App. LEXIS 276 (1982).

Commencement of trial.

Evidence supported trial judge's determina-

tion that trial had begun when Government proffered exhibits and records as evidence in Government's case against defendants and thus trial judge's subsequent ruling that pertinent regulation adopted by city council was defective and could not be used in support of prosecution was an appealable ruling made during trial under statute providing that United States or District of Columbia may appeal ruling made during trial. D.C. Code §§ 17-305(a), 23-104(d). *United States v. Lowery*, 382 A.2d 1007, 1977 D.C. App. LEXIS 301 (1977).

In determining whether trial court's ruling, made after Government's proffer of evidence, that pertinent regulation adopted by city council was defective and could not be used in support of prosecution was made after trial had begun and thus appealable under statute providing that United States or District of Columbia may appeal ruling made during trial, possibility that evidence in Government's proffer may have been irrelevant to Government's case-in-chief was not determinative. D.C. Code § 23-104(d). *United States v. Lowery*, 382 A.2d 1007, 1977 D.C. App. LEXIS 301 (1977).

Construction and application.

Generally, the Court of Appeals broadly construes the statute that permits the District to appeal a pre-trial order of the trial court in a criminal case that denies the prosecutor the use of evidence at trial that is a substantial proof of the charge pending against the defendant. In re F.K., 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

Government has no right of appeal in criminal case unless there is express legislative authorization. D.C. Code 1981, § 23-104(c). *District of Columbia v. Whitley*, 640 A.2d 710, 1994 D.C. App. LEXIS 55 (1994).

Language of statute conferring authority on United States to appeal criminal matters such as dismissal of indictment or information or otherwise terminating prosecution in favor of defendant must be literally construed. D.C. Code § 23-104(c). *United States v. Jones*, 423 A.2d 193, 1980 D.C. App. LEXIS 399 (1980).

Objective of 1970 amendment to local code granting government right to appeal orders entered prior to trial suppressing evidence is to accord conclusiveness at trial level to pretrial rulings of motion to suppress by equating such rulings with final orders for purposes of appeal, and unless appealed disposition of pretrial motion on suppression issue would seem necessarily binding on trial judge should motion be renewed subsequently. D.C. Code § 23-104(a) (2). *United States v. Dockery*, 294 A.2d 158, 1972 D.C. App. LEXIS 406 (1972).

Conviction.

Statute [D.C. Code 1981, § 23-104(e)] permitting defendant to challenge on appeal from

conviction a decision entered on interlocutory government appeal applies to interlocutory appeals only during trial and does not apply to pretrial interlocutory appeals. D.C. Code 1981, § 23-104(a)(1), (b), (d). *Minick v. United States*, 506 A.2d 1115, 1986 D.C. App. LEXIS 298 (1986), writ of certiorari denied by 479 U.S. 836, 107 S. Ct. 133, 93 L. Ed. 2d 76, 1986 U.S. LEXIS 3635, 55 U.S.L.W. 3233 (1986).

Dismissals.

— Contempt, dismissals.

Trial court's refusal to issue order to show cause why special agent of Drug Enforcement Administration (DEA) should not be held in criminal contempt was not appealable. D.C. Code 1981, § 23-104(c). *United States v. Maye*, 675 A.2d 57, 1996 D.C. App. LEXIS 251 (1996).

Once trial court has ordered person to show cause why he or she should not be held in criminal contempt, and issue has been joined, dismissal of contempt proceeding is legal equivalent of terminating prosecution in favor of defendant, and thus is appealable. D.C. Code 1981, § 23-104(c). *United States v. Maye*, 675 A.2d 57, 1996 D.C. App. LEXIS 251 (1996).

— Dismissals without prejudice.

Unlike dismissal of criminal complaint, dismissal of indictment or information is appealable even if it is without prejudice to filing of new such instrument. D.C. Code 1981, § 23-104(c). *United States v. Maye*, 675 A.2d 57, 1996 D.C. App. LEXIS 251 (1996).

Dismissal of an information without prejudice is an appealable order. D.C. Code § 23-104. *United States v. Cummings*, 301 A.2d 229, 1973 D.C. App. LEXIS 241 (1973).

That dismissal of indictment without prejudice created no bar to seeking a new indictment did not render dismissal order nonreviewable. D.C. Code §§ 11-721, 23-104(c). *United States v. Hector*, 298 A.2d 504, 1972 D.C. App. LEXIS 315 (1972).

— Double jeopardy, dismissals.

Trial court's sua sponte dismissal of indictment for fleeing police officer for want of prosecution after defendant entered guilty plea was not acquittal on merits, and therefore, was appealable without implicating prohibition against double jeopardy. *District of Columbia v. Whitley*, 934 A.2d 387, 2007 D.C. App. LEXIS 639 (2007).

Because jeopardy had not attached when trial court dismissed charge after opening statement by prosecutor, Court of Appeals had jurisdiction over government's appeal. D.C. Code 1981, § 23-104(c). *District of Columbia v. Whitley*, 640 A.2d 710, 1994 D.C. App. LEXIS 55 (1994).

United States could appeal to Court of Appeals order which terminated prosecution in

favor of defendant where Court of Appeals' opinion on constitutionality of statute at issue would not require retrial prohibited by double jeopardy clause. 40 U.S.C. § 13k; D.C. Code 1981, § 23-104(c); U.S. Const. Amends. 1, 5. United States v. Wall, 521 A.2d 1140, 1987 D.C. App. LEXIS 301 (1987).

Where criminal trial was aborted under circumstances permitting retrial, double jeopardy principles did not preclude Government from appealing from subsequent dismissal of indictment. D.C. Code §§ 22-1801(a), 22-2202, 23-104(c); U.S. Const. Amends. 5, 6. United States v. Harvey, 377 A.2d 411, 1977 D.C. App. LEXIS 376 (1977).

— In general.

Trial court's ruling that substantially dismissed stalking counts based on its interpretation of stalking statute was appealable order. D.C. Code 1981, § 23-104(c). United States v. Smith, 685 A.2d 380, 1996 D.C. App. LEXIS 233 (1996), writ of certiorari denied by 522 U.S. 856, 118 S. Ct. 152, 139 L. Ed. 2d 98, 1997 U.S. LEXIS 5273, 66 U.S.L.W. 3258 (1997).

Trial court's refusal to reconsider order dismissing indictment was not "order" within meaning of statute conferring authority on United States to appeal. D.C. Code § 23-104(c). United States v. Jones, 423 A.2d 193, 1980 D.C. App. LEXIS 399 (1980).

Where defendant moved for judgment of acquittal but, having entered a plea, for directed insanity verdict, verdict of not guilty by reason of insanity was not acquittal on the merits that barred appeal by Government from direction of such verdict. D.C. Code § 23-104(c). United States v. Tyler, 376 A.2d 798, 1977 D.C. App. LEXIS 339 (1977).

Ruling that original indictment which charged only that defendant "stole" was insufficient because of the failure to allege specific intent to steal was not a decision which went to substance of accusation or defenses to it and thus did not preclude, under doctrine of res judicata, subsequent grand jury indictment in same language, even absent notice of appeal by Government. D.C. Code §§ 22-2901, 22-3202, 23-104(c). Washington v. United States, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Government may appeal order which terminates prosecution in favor of defendant and is not an acquittal on the merits. D.C. Code § 23-104(c). United States v. Shorter, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

Where order of suppression of evidence, if lawful, effectively terminated the prosecution, trial date became academic, rule requiring written motion for a continuance and request for a continuance at least two days before trial became subordinate to government's statutory right to appeal during time when appeal could be noted and oral continuance request by gov-

ernment to permit an appeal from suppression order could not justify dismissal order on ground of government's failure to comply with rules. D.C. Code SCR, Criminal Rules 111, 111(b)(1), (c); D.C. Code §§ 22-3601, 23-104(a)(1), 33-402. United States v. Oliver, 297 A.2d 778, 1972 D.C. App. LEXIS 286 (1972).

Where underlying rationale for dismissal of information was an erroneous belief that defendant would be incarcerated because of government's appeal from suppression order and a preoccupying disagreement with government's announced determination to proceed with the appeal, order of dismissal was without authority and void. D.C. Code §§ 22-3601, 23-104(a)(1), (f), 23-581, 33-402. United States v. Oliver, 297 A.2d 778, 1972 D.C. App. LEXIS 286 (1972).

— Time for taking appeal, dismissals.

Where United States failed to note its appeal of original order dismissing indictment against defendant within required ten days, proceedings were irrevocably terminated, and trial court's subsequent refusal to reconsider its initial order dismissing indictment was not an appealable "order." D.C. Code § 23-104(c); D.C. Code Court of Appeals Rule 4, subd. II(b)(1, 2). United States v. Jones, 423 A.2d 193, 1980 D.C. App. LEXIS 399 (1980).

Jurisdiction.

Court of Appeals had jurisdiction to hear appeal from order granting juvenile's motion to suppress statements, even though drug offense with which juvenile had been charged had been dismissed for want of prosecution, where the charge against juvenile was subject to a three-year statute of limitations, and therefore the government was free to re-charge the juvenile, which the government intended to do if the juvenile's statements were admissible. In re I.J., 906 A.2d 249, 2005 D.C. App. LEXIS 733 (2006).

Whether trial court had jurisdiction over defendant after releasing him from its jurisdiction did not determine jurisdiction of Court of Appeals on appeal, and government could appeal the trial court's order where it was entered without authority. D.C. Code § 23-104(c). United States v. Shorter, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

Dismissal of information for want of prosecution, after denial of government's request for a continuance, sought to permit an appeal from suppression order, because of failure of government to comply with rules requiring written motion for continuance, service on opposite party, a hearing and request for continuance at least two days before trial, could not be entered to defeat jurisdiction of District of Columbia Court of Appeals on a timely appeal taken pursuant to statute allowing appeal by govern-

ment from suppression order. D.C. Code SCR, Criminal Rules 111, 111(b)(1), (c); D.C. Code § 23-104(a)(1). *United States v. Oliver*, 297 A.2d 778, 1972 D.C. App. LEXIS 286 (1972).

Speedy trial.

— Defendant's obligations, speedy trial.

Failure of the defendant to take any steps to ensure that the Government's appeal from a pretrial suppression order was expedited diminished somewhat the weight of the delay, but it was not enough to remove it from the category of significant delay in the context of the speedy trial claim. D.C. Code 1981, § 23-104(a)(1), (e); U.S. Const. Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Even if entitled by statute to an expedited government appeal before or during trial, defendant should make that interest known. D.C. Code § 23-104(e); D.C. Code Court of Appeals Rules, rule 4, pt. Day v. *United States*, 390 A.2d 957, 1978 D.C. App. LEXIS 485 (1978).

— In general.

For an expedited appeal from a pretrial suppression order in the context of a speedy trial, the government should normally be expected to file a brief in about 20 days from the date of the notice of appeal. D.C. Code 1981, § 23-104(a)(1), (e); U.S. Const. Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Lapse of 25 months between defendant's arrest on charges and commencement of trial was not violative of defendant's constitutional right to a speedy trial, notwithstanding Government's failure to expedite appeal of suppression ruling, defendant's repeated attempts to gain dismissal on speedy trial grounds, and prejudice to defendant from his incarceration during entire period of 25 months, where bulk of delay was due to neutral, institutional factors, defendant's own failure to seek expedition of pretrial appeal and to demand a prompt trial, and total absence of any impairment of defendant's ability to defend himself by virtue of delay. D.C. Code 1981, § 23-104(a)(1), (e); U.S. Const. Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Sixth Amendment right to speedy trial embraced period between arrest and trial and also applied to postappeal period, i.e., time between issuance of appellate court's mandate reversing

conviction and commencement of new trial, or decision of postappeal speedy trial motion. D.C. Code §§ 23-104, 23-104(c); U.S. Const. Amends. 5, 6, 14. *United States v. Alston*, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

Four and one-half-month period between arrest and trial and three and one-half-months postappeal period, i.e., time between issuance of appellate court's mandate reversing conviction and commencement of new trial or decision on postappeal speedy trial motion, did not deprive defendant of constitutional right to speedy trial, whether periods were taken separately or together. D.C. Code §§ 23-104, 23-104(c); U.S. Const. Amends. 5, 6, 14. *United States v. Alston*, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

Sixth Amendment covers period of pretrial and midtrial government appeals under District of Columbia statute. D.C. Code § 23-104; U.S. Const. Amend. 6. *United States v. Alston*, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

— Neutral delays, speedy trial.

A neutral delay of no more than two weeks should have been allowed Government, for speedy trial purposes, in completing transcript once notice of appeal was filed from pretrial separation order. D.C. Code 1981, § 23-104(a)(1), (e); U.S. Const. Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Unavoidable delay by a pretrial government appeal should be considered neutral, and thus counted against the government on a speedy trial claim to roughly the same degree as delay caused by court backlog, and unreasonable delay caused by failure to expedite the appeal should be considered significant. D.C. Code 1981, § 23-104(a)(1), (e); U.S. Const. Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Since some delay in the trial necessarily attends invocation of the appellate process when the government appeals pretrial separation orders, it is not appropriate to count all such time automatically as significant delay for speedy trial purpose. D.C. Code 1981, § 23-104(a)(1), (e); U.S. Const. Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Period of ten days taken by the United States Attorney's Office to make a considered decision

whether to file a notice of appeal from a pretrial suppression order was not unreasonable and, hence, was neutral delay for purpose of analyzing speedy trial claim. D.C. Code 1981, § 23-104(a)(1), (e); U.S. Const.Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Delay of two weeks by Government in completing transcript after filing of notice of appeal from pretrial suppression order was unavoidable and, hence, was neutral delay for purpose of analyzing speedy trial claim. D.C. Code 1981, § 23-104(a)(1), (e); U.S.C. Const.Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

— Prosecutorial delays, speedy trial.

Government seeking appeal of trial court's granting of juvenile's motion to suppress substantially complied with requirement that it show that the appeal was not taken for purpose of delay and that the suppressed evidence was a substantial proof of pending charge, where Government represented, in notice of appeal, that it intended to charge juvenile again if the evidence was held to be admissible. In re I.J., 906 A.2d 249, 2005 D.C. App. LEXIS 733 (2006).

Twelve months of two-year delay occasioned by Government's two interlocutory appeals would be considered as significant, in determining whether Government denied defendant's right to speedy trial, though issues appealed involved evidence which was vital to case and Government's position that trial court had erred was very strong, where Government took no action to obtain expedition during first appeal and, in second appeal, tardily sought expedition and then filed its reply brief late although court had granted its request to expedite. Court of Appeals Rule 4, Pt. III(a)(1984); D.C. Code 1981, § 23-104(e); U.S. Const.Amend. 6. *Sell v. United States*, 525 A.2d 1017, 1987 D.C. App. LEXIS 352 (1987).

Delay of four months of the Government in filing an expedited appeal of pretrial suppression order constituted a significant charge against the Government in the context of analyzing speedy trial claim. D.C. Code 1981, § 23-104(a)(1), (e); U.S. Const.Amend. 6. *Graves v. United States*, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Although there was no indication that Government, by taking an interlocutory appeal of

another case against discovery of names and addresses of its prospective witnesses, attempted to delay trial to obtain a tactical advantage or to harass defense, and although no deliberate delay in processing appeal was evident, because prosecutor did not invoke expedited appeal procedure provided by statute, 18 ½ -month period in which case was held in abeyance pending disposition of Government's interlocutory appeal represented a significant charge against the Government in speedy trial calculation. U.S. Const. Amend. 6; D.C. Code Court of Appeals Rules, rule 4, pt. III; D.C. Code § 23-104(e). *Day v. United States*, 390 A.2d 957, 1978 D.C. App. LEXIS 485 (1978).

Pretrial government appeal time, whether short or long, shall as a general rule be considered a significant, rather than neutral, charge against the Government when calculating speedy trial claim, unless prosecutor moves the Court of Appeals to expedite appeal; if that is done, Government's charge for delay shall be deemed neutral, irrespective of length, since appellate court itself must be presumed to act as expeditiously as possible given its case load and established, often conflicting, priorities. U.S. Const. Amend. 6; D.C. Code Court of Appeals Rules, rule 4, pt. III; D.C. Code § 23-104(e). *Day v. United States*, 390 A.2d 957, 1978 D.C. App. LEXIS 485 (1978).

Suppression of evidence.

— Adequacy of representation, suppression of evidence.

Inasmuch as defense counsel might have concluded that evidence to support motion to suppress was lacking, counsel was not negligent in failing to raise wrongful seizure issue with respect to stolen property taken from defendant prior to his arrest. D.C. Code §§ 22-2205, 23-104(a)(2); D.C. Code SCR, Criminal Rule 52(b). *Young v. United States*, 284 A.2d 671, 1971 D.C. App. LEXIS 254 (1971).

— Appeal of suppression of evidence.

Defendant waived for appeal issue of whether evidence should have been suppressed in drug prosecution, where defendant did not file a motion to suppress in the trial court. *Watley v. United States*, 918 A.2d 1198, 2007 D.C. App. LEXIS 110 (2007).

Government's failure to appeal prior ruling granting defendant's motion to suppress in other murder case did collaterally estop government from litigating defendant's motion to suppress in current, unrelated murder case; prior ruling did not constitute a final judgment, and even if such judgment did constitute final judgment, strong policy considerations dictated against application of doctrine, as the government, who was not relitigating or retrying other murder case, had not yet had a full and fair opportunity to litigate issues surrounding

the current murder case. *United States v. McMillian*, 898 A.2d 922, 2006 D.C. App. LEXIS 215 (2006).

Order sanctioning District for discovery violation by excluding evidence in suppression hearing was not final order that denied District use of substantial evidence at trial, and thus, sanction order was not appealable. *In re F.K.*, 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

In order for the District to invoke the Court of Appeals' jurisdiction to review a pre-trial order of the trial court in a criminal case, the order from which the District appeals must deny the prosecutor the use of evidence at trial that is a substantial proof of the charge pending against the defendant. *In re F.K.*, 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

Statute allowing government to appeal certain pretrial orders permits government to appeal orders denying it the right to introduce specified evidence on grounds that it is hearsay or lacks sufficient relevance to trial issues, and government may do so even if order was "tentative" in that trial judge was free to rule again on relevance of evidence in context of trial. D.C. Code, 1981 § 23-104(a)(1). *United States v. Williams*, 697 A.2d 1244, 1997 D.C. App. LEXIS 165 (1997).

Trial court's written pretrial order denying government's request to introduce Drew evidence in prosecution for second-degree murder and voluntary manslaughter was appealable, though judge indicated at oral ruling that her ruling was only advisory and that trial judge would have freedom to reconsider ruling in context of trial. D.C. Code 1981, §§ 22-2403, 22-2405, 22-3202, 23-104(a)(1). *United States v. Williams*, 697 A.2d 1244, 1997 D.C. App. LEXIS 165 (1997).

Government could appeal adverse pretrial evidentiary rulings in criminal prosecution pursuant to statute, even though judge had not ruled on admissibility of all evidence as to which parties disagreed, the government challenged the legal standard used by trial court rather than whether specific evidence was admissible, and evidence might ultimately be excluded at trial under correct standard, since United States Attorney certified that appeal was not filed for delay and that trial court's rulings excluded evidence that was substantial proof of charge pending against defendants. D.C. Code 1981, § 23-104(a)(1). *United States v. Hammond*, 681 A.2d 1140, 1996 D.C. App. LEXIS 158 (1996), remanded by 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (D.C. 2005).

The government may appeal any pretrial evidentiary ruling excluding or suppressing evidence, provided that the government certifies that the evidence constitutes substantial proof of charge pending against defendant and that the appeal is not taken for purposes of delay.

D.C. Code 1981, § 23-104(a)(1). *District of Columbia v. McConnell*, 464 A.2d 126, 1983 D.C. App. LEXIS 438 (1983).

Not every comment made by trial judge during pretrial hearing indicating the evidence he or she believes will be excluded from criminal prosecution is necessarily an "order" within meaning of statute allowing government to appeal a pretrial order. D.C. Code 1981, § 23-104(a)(1). *District of Columbia v. McConnell*, 464 A.2d 126, 1983 D.C. App. LEXIS 438 (1983).

Government could appeal from order denying right to introduce evidence of defendant's refusal to submit to breathalyzer test following his arrest for driving under the influence where order excluded evidence certified by corporation counsel as constituting substantial proof of charge of operating a motor vehicle while under the influence of intoxicating liquor and there was further certification that appeal was not taken for the purpose of delay. D.C. Code 1981, §§ 23-104(a)(1), 40-716(b). *District of Columbia v. McConnell*, 464 A.2d 126, 1983 D.C. App. LEXIS 438 (1983).

Pretrial evidentiary ruling that evidence concerning one rape alleged would not be admissible in separate trial involving another to show a "common scheme or plan" was not appealable, inasmuch as it would not have law-of-the-case effect at subsequent trial and trial court in so ruling did nothing more than express an advisory opinion on admissibility of evidence if offered at trial. D.C. Code §§ 11-946, 23-104, 23-104(a)(1); D.C. Code SCR, Criminal Rules 12, 12(b)(3), 41(g), 41-I(1); Fed. Rules Crim. Proc. rule 12(b)(3), 18 U.S.C.; 18 U.S.C. § 3731. *United States v. Shields*, 366 A.2d 454, 1976 D.C. App. LEXIS 416 (1976).

Trial court's order that the United States would not be permitted to call any person as a witness in criminal case unless, with respect to that witness, the government had fully complied with a prior order that the United States furnish pretrial to defense counsel the arrest and criminal records of prosecution witnesses was final and appealable where the government refused to comply with the order to produce and thus the order precluding the calling of the witnesses effectively terminated the prosecution. D.C. Code § 23-104(a)(1). *United States v. Engram*, 337 A.2d 488, 1975 D.C. App. LEXIS 386 (1975), writ of certiorari denied by 423 U.S. 1058, 96 S. Ct. 793, 46 L. Ed. 2d 648, 1976 U.S. LEXIS 1055 (1976).

District of Columbia had right to appeal order of Family Division of Superior Court, entered at prehearing stage of juvenile delinquency proceeding, suppressing as evidence unregistered pistol and suppressing certain statements made by subject child prior to his arrest. D.C. Code §§ 16-2301, 16-2318, 22-3204, 23-104(a)(1); D.C. Code SCR, Juvenile Rules 11,

31(c). District of Columbia v. M.E.H., 312 A.2d 561, 1973 D.C. App. LEXIS 395 (1973).

Words "charged with a criminal offense" as used in statute providing that District of Columbia may appeal a suppression order entered before trial of a person charged with a criminal offense includes the term "delinquent act." D.C. Code §§ 22-3204, 23-104(a)(1). District of Columbia v. M.E.H., 312 A.2d 561, 1973 D.C. App. LEXIS 395 (1973).

— **In general.**

Failure to file a motion to suppress before trial is treated as a waiver of any claim that the evidence was unlawfully seized, absent a showing of exceptional circumstances. Watley v. United States, 918 A.2d 1198, 2007 D.C. App. LEXIS 110 (2007).

In order to establish materiality of evidence to the preparation of a defense, the defendant must demonstrate, under discovery rule, a relationship between the requested evidence and the issues in the case, and there must exist a reasonable indication that the requested evidence will either lead to other admissible evidence, assist the defendant in the preparation of witnesses or in corroborating testimony, or be useful as impeachment or rebuttal evidence. United States v. Curtis, 755 A.2d 1011, 2000 D.C. App. LEXIS 126 (2000).

Issue whether trial court's ruling that government's negligent loss of notes taken during early photo array showings should be sanctioned by a Bundy "missing witness" on appeal by government from a pretrial suppression order since, aside from fact that ruling did not suppress evidence or otherwise deny prosecutor use of evidence at trial, instruction could be reshaped or totally omitted by trial court as trial developed and, hence, was not so inseparable from preclusion of certain testimony as to make it part and parcel of pretrial suppression order. D.C. Code 1981, § 23-104(a)(1). United States v. Jackson, 450 A.2d 419, 1982 D.C. App. LEXIS 418 (1982).

— **Law of case, suppression of evidence.**

Trial judge correctly refused to allow defendant to renew his motion for leave to move to suppress evidence during law enforcement officer's testimony at trial, as motion judge had previously denied defendant's motion for leave to move to suppress evidence, and this ruling was the law of the case. Olafisoye v. United States, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Though on interlocutory appeal from trial court's ruling that victim's statement to police officer and nurse that she had been raped was inadmissible, the Court of Appeals reversed, ordinary principles of "law of the case" did not apply and ruling on interlocutory appeal did not affect right of defendant, in subsequent

appeal from judgment of conviction, to claim as error reversal by trial court on remand of ruling appealed from during trial. D.C. Code 1981, §§ 22-2801, 23-104(d, e). Leasure v. United States, 458 A.2d 726, 1983 D.C. App. LEXIS 337 (1983).

With respect to motions to suppress, original ruling thereon becomes law of case and is binding on other trial court judges who preside over later phases of same proceedings, absent significant new facts or defendant's prior unawareness of grounds for motion. D.C. Code § 23-104(a)(2). United States v. Davis, 330 A.2d 751, 1975 D.C. App. LEXIS 302 (1975).

When a pretrial motion to suppress has been heard and decided, that decision becomes the law of the case and only if new grounds, including new facts, are advanced which the defendant could not reasonably have been aware of may a trial judge entertain a renewed motion to suppress. D.C. Code General Sessions Court Rules, Criminal Division rule 41(e); Fed. Rules Crim. Proc. rule 41(e), 18 U.S.C.; D.C. Code § 23-104(a)(2), (b). Jenkins v. United States, 284 A.2d 460, 1971 D.C. App. LEXIS 249 (1971).

— **Plain error, suppression of evidence.**

Defendant's failure to move to suppress evidence before trial and failure to show good cause for not filing suppression motion resulted in plain error review of issue of whether his seizure by police for identification constituted an illegal arrest. D.C. Code 1981, § 23-104(a)(2); Criminal Rules 12(b)(3), (d), 47-I(c). Smith v. United States, 561 A.2d 468, 1989 D.C. App. LEXIS 125 (1989), substituted opinion in part at 1989 D.C. App. LEXIS 218 (D.C. Oct. 11, 1989).

In view of defendant's failure to move to suppress narcotics paraphernalia before trial, absent showing of plain error, admission of narcotics paraphernalia into evidence and denial of motion for judgment of acquittal of possession of narcotics paraphernalia were not errors. D.C. Code SCR, Criminal Rules 12(b)(3), 41(g); D.C. Code §§ 22-3601, 23-104(a)(2). Brown v. United States, 289 A.2d 891, 1972 D.C. App. LEXIS 370 (1972).

Admission into evidence of two coats which were in paper bag defendant had handed to woman companion when officers asked defendant to come over to police car was not "plain error" such as would provide ground for reversal in absence of motion to exclude the evidence in trial court. D.C. Code §§ 22-2205, 23-104(a)(2); D.C. Code SCR, Criminal Rule 41(g). Young v. United States, 284 A.2d 671, 1971 D.C. App. LEXIS 254 (1971).

— **Pretrial motion required, suppression of evidence.**

Defendant's failure to file motion to suppress evidence prior to trial constituted waiver of any

claim that marijuana seized from his car was unlawfully seized; only in exceptional cases were motions to suppress heard at trial, and defendant failed to show that his was such a case, given that his only reason for not filing motion prior to trial rested on claim that Supreme Court had recently granted certiorari in case with similar facts, and he did not know what law was, which claim was frivolous on its face. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Unless a defendant can show good cause for failure to file a motion to suppress evidence before trial, exceptions are not permitted. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Failure to file a motion to suppress evidence before trial is treated as a waiver of any claim that the evidence was unlawfully seized, absent a showing of exceptional circumstances. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Defendant waived claim that the murder weapons and ammunition taken from his home during search videotaped by television station should have been suppressed where he did not move for suppression on the alleged grounds before trial and was or should have been aware of the alleged grounds through reasonable inquiry into the facts and the law. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Evidence obtained where the statute has not been complied with and where no exception applies generally may be suppressed on motion by a defendant with standing to challenge the violation. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

Drug defendant waived issue of legality of detention by failing to move to suppress tangible evidence at trial, absent showing that defendant lacked opportunity to make suppression motion, or that he was unaware of grounds for motion. D.C. Code 1981, § 23-104(a)(2). *Simpson v. United States*, 576 A.2d 1336, 1990 D.C. App. LEXIS 143 (1990).

Defendant, who never asked trial court to suppress statements he had made to police and grand jury and who failed to show that he was unaware of grounds for motion to suppress or otherwise lacked opportunity to file such motion, did not preserve for appeal issue concerning whether trial court should have suppressed his uncounseled statements to police and grand jury at time he appeared to receive lineup directive. D.C. Code 1981, § 23-104(a)(2); Criminal Rule 12(b)(3). *Brown v. United States*, 518 A.2d 415, 1986 D.C. App. LEXIS 482 (1986), writ of certiorari denied by 485 U.S. 978, 108 S. Ct. 1274, 99 L. Ed. 2d 485, 1988 U.S. LEXIS 1530, 56 U.S.L.W. 3666 (1988).

Defendant did not move before trial to suppress handgun, as required by statute and court rules, and absent allegation of good cause for his failure to do so, he waived issue on appeal. D.C. Code 1973, § 23-104(a)(2); Criminal Rules 12(b)(3), 47-I(c). *Streater v. United States*, 478 A.2d 1055, 1984 D.C. App. LEXIS 442 (1984).

Issue whether stop of defendant's car by police officers was without articulable and reasonable suspicion that he had been violating the law, so as to make his subsequent arrest illegal, was not preserved for review by superior court where no pretrial motion to suppress was made, defendant did not object to the evidence at any time during the trial and he made no showing that he was unaware of the grounds for such a motion or that he lacked opportunity to make it. D.C. Code §§ 23-104(a)(2), 40-302(e); D.C. Code SCR, Criminal Rule 12(b)(3). *York v. District of Columbia*, 407 A.2d 695, 1979 D.C. App. LEXIS 470 (1979).

Defendant waived his right to consideration of at-trial suppression motion, where he had three months after denial of motion to suppress without prejudice to file motion that would meet requirements of court's rules, he did not seek pretrial discovery, so that he could not validly claim that he was unaware of grounds of the motion until trial, and he made no proffer showing that case was exceptional one. D.C. Code § 23-104(a)(2); D.C. Code SCR Criminal Rules 12(b)(3), (d), 47-I. *Duddles v. United States*, 399 A.2d 59, 1979 D.C. App. LEXIS 307 (1979).

Trial court erred in determining sua sponte to rehear motion to suppress, which had previously been considered and denied pretrial, where no newly discovered grounds were presented. D.C. Code § 23-104(a)(2); U.S. Const. Amend. 4. *United States v. Allen*, 337 A.2d 512, 1975 D.C. App. LEXIS 382 (1975).

Motion to suppress evidence must be filed before trial. D.C. Code § 23-104(a)(2); D.C. Code SCR, Criminal Rules 12(b)(3), 47-I(c). *Anderson v. United States*, 326 A.2d 807, 1974 D.C. App. LEXIS 294 (1974), writ of certiorari denied by 420 U.S. 978, 95 S. Ct. 1405, 43 L. Ed. 2d 659, 1975 U.S. LEXIS 966 (1975).

Trial court's refusal to hear motion to suppress evidence filed at time of trial was within his discretion where defense counsel did not claim that motion was based upon newly learned information but acknowledged that belated effort to move to suppress was tactical response to nonappearance of two witnesses. D.C. Code § 23-104(a)(2); D.C. Code SCR, Criminal Rules 12(b)(3), 47-I(c). *Anderson v. United States*, 326 A.2d 807, 1974 D.C. App. LEXIS 294 (1974), writ of certiorari denied by 420 U.S. 978, 95 S. Ct. 1405, 43 L. Ed. 2d 659, 1975 U.S. LEXIS 966 (1975).

First trial judge's refusal to permit defense counsel to be heard as to whether there was valid basis for excusing him from normal requirement of filing motion to suppress evidence prior to trial was harmless where first judge did not again reach case and second trial judge, in refusing to rehear the motion to suppress, independently concluded that situation did not present an appropriate exception to the requirement. D.C. Code § 23-104(a)(2); D.C. Code SCR, Criminal Rules 12(b)(3), 47-1(c). *Anderson v. United States*, 326 A.2d 807, 1974 D.C. App. LEXIS 294 (1974), writ of certiorari denied by 420 U.S. 978, 95 S. Ct. 1405, 43 L. Ed. 2d 659, 1975 U.S. LEXIS 966 (1975).

Where defendant did not move to suppress narcotics paraphernalia, defendant urged no justification for his failure to move to suppress and he did not attempt to show lack of opportunity to raise motion before trial or lack of awareness of grounds for motion before trial, defendant's contention that paraphernalia was obtained as result of illegal search and seizure would not be considered on appeal. D.C. Code SCR, Criminal Rules 12(b)(3), 41(g); D.C. Code General Sessions Court Rules, Criminal Division rule 28(e); D.C. Code §§ 22-3601, 23-104(a)(2); Fed.Rules Crim.Proc. rule 41(e), 18 U.S.C.; U.S. Const. Amend. 4. *Brown v. United*

States, 289 A.2d 891, 1972 D.C. App. LEXIS 370 (1972).

Addition of provision to rule for motion to suppress evidence obtained by unlawful search and seizure requiring that motion be made before trial unless opportunity therefore did not exist or defendant was not aware of grounds for the motion was intended to place further restriction upon manner in which search and seizure issues can be raised. D.C. Code § 23-104(a)(2); D.C. Code SCR, Criminal Rule 52(b). *Young v. United States*, 284 A.2d 671, 1971 D.C. App. LEXIS 254 (1971).

Motions to suppress should be heard during trial only in most exceptional cases. D.C. Code § 23-104(a)(2); D.C. Code General Sessions Court Rules, § 1, rule 41(e); D.C. Code General Sessions Court Rules, Criminal Division rule 41(g). *Bailey v. United States*, 279 A.2d 508, 1971 D.C. App. LEXIS 179 (1971).

Waiver.

Objections to the admission of evidence are waived when they are not raised in a pretrial motion to suppress the evidence, unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion. *Simmons v. United States*, 999 A.2d 898, 2010 D.C. App. LEXIS 410 (2010).

§ 23-105. Challenges to jurors.

(a) In a trial for an offense punishable by death, each side is entitled to twenty peremptory challenges. In a trial for an offense punishable by imprisonment for more than one year, each side is entitled to ten peremptory challenges. In all other criminal cases, each side is entitled to three peremptory challenges. If there is more than one defendant, or if a case is prosecuted both by the United States and by the District of Columbia, the court may allow additional peremptory challenges and permit them to be exercised separately or jointly, but in no event shall one side be entitled to more peremptory challenges than the other.

(b) The court may direct that jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. In addition to those otherwise allowed, each side is entitled to one peremptory challenge if one or two alternate jurors are to be impaneled, to two peremptory challenges if three or four alternate jurors are to be impaneled, and to three peremptory challenges if five or six alternate jurors are to be impaneled.

(c) Any juror or alternate juror may be challenged for cause.

(d) No verdict shall be set aside for any cause which might be alleged as ground for challenge of a juror before the jury is sworn, except when the objection to the juror is that he had a bias against the defendant such as would have disqualified him, such disqualification was not known to or suspected by the defendant or his counsel before the juror was sworn, and the basis for such disqualification was the subject of examination or request for examination of the prospective jurors by or on request of the defendant.

(July 29, 1970, 84 Stat. 607, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Challenges in civil cases, see § 11-1902.

Qualifications of jurors, see § 11-1901.

Prior Codifications. — 1981 Ed., § 23-105.
1973 Ed., § 23-105.

CASE NOTES

ANALYSIS

Challenges for cause.

—In general.

—Preservation of challenges for cause.

Defendant's presence at voir dire.

Jury pool.

Peremptory challenges.

—Age, peremptory challenges.

—Discriminatory use, peremptory challenges.

—In general.

—Number of peremptory challenges.

Review.

Challenges for cause.

— In general.

The trial judge has broad discretion when deciding whether to strike a juror for cause. *Ahmed v. United States*, 856 A.2d 560, 2004 D.C. App. LEXIS 449 (2004), writ of certiorari denied by 544 U.S. 955, 125 S. Ct. 1719, 161 L. Ed. 2d 536, 2005 U.S. LEXIS 2891, 73 U.S.L.W. 3569 (2005).

The trial court, during voir dire, is under no obligation to inquire as to the jurors' experience with crimes of any type. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

In escape prosecution, trial judge did not abuse its discretion in rejecting defense counsel's request that, during individual interviews with each prospective juror during voir dire, judge ask question to jury concerning whether they or persons close to them have been accused of, victim of, or a witness to any crime without permitting juror to make determination on whether such experience affected juror's ability to be fair and impartial; while it might have been appropriate to inquire to the prospective jurors' experience with the underlying offense, no such question was requested, and defense counsel was given full opportunity to ask any follow-up questions that counsel wished to explore. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

Defendant had a Sixth Amendment right during voir dire to pose follow-up questions to prospective jurors who had close friends or family members in the law enforcement field; the court's questions did not explore the relationship between the identified law enforcement person and the prospective juror, and the testimony of police officers and government experts played a substantial role in the case. *Doret v. United States*, 765 A.2d 47, 2000 D.C.

App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

The trial court has broad discretion in conducting voir dire examination. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

A potential juror's bias may be implied or presumed as a matter of law, as in the case of a potential juror who is related to a party in the case or may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant, such as a relationship with a prosecutor, to warrant granting the trial judge discretion to excuse the juror for cause, but not so great as to make mandatory a presumption of bias. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

A court is allowed to dismiss a juror on the ground of inferable bias only after having received responses from the juror that permit an inference that the juror in question would not be able to decide the matter objectively; in other words, the judge's determination must be grounded in facts developed at voir dire. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

To be meaningful, voir dire, whether in a capital case or in the more usual situation, must uncover more than the jurors' bottom line conclusions to broad questions which do not in themselves reveal automatically disqualifying biases as to their ability fairly and accurately to decide the case, and indeed, which do not elucidate the bases for those conclusions. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Where potential jurors remain silent during voir dire in response to a general question regarding their ability to be fair and impartial despite their family or close relationships with persons in the law enforcement field, the trial

judge has an obligation to probe further and to elicit more than a nod of the head or a simple "yes" or "no" response to ensure their impartiality and fairness as jurors. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Trial court did not abuse its discretion in failing to ask jury panel specifically whether they would be influenced by fact that case involved sex crimes with little girls, since defendant himself covered question in substance by asking jury whether their impartiality would be affected by fact that crime, which they knew was sex crime, involved children. D.C. Code 1981, § 22-1112(b). *Harlee v. District of Columbia*, 558 A.2d 351, 1989 D.C. App. LEXIS 99 (1989).

— Preservation of challenges for cause.

The trial court's failure to strike two allegedly biased jurors for cause did not constitute reversible error, where defendant used two peremptory challenges to strike the jurors, and he failed to object to the ultimate composition of the jury. *Ahmed v. United States*, 856 A.2d 560, 2004 D.C. App. LEXIS 449 (2004), writ of certiorari denied by 544 U.S. 955, 125 S. Ct. 1719, 161 L. Ed. 2d 536, 2005 U.S. LEXIS 2891, 73 U.S.L.W. 3569 (2005).

Prerequisite to challenging verdict on ground of partiality of jury is that defense have either requested examination on subject or actually conducted such questioning. *Harlee v. District of Columbia*, 558 A.2d 351, 1989 D.C. App. LEXIS 99 (1989).

No plain error resulted from failure to question jury as to whether they had special prejudices involving men in light of defendant's failure to provide basis for conclusion that gender bias played role in his conviction, and in light of discretion afforded trial court in conducting voir dire and trial court's general interrogation at end of voir dire as to bias of jury. *Harlee v. District of Columbia*, 558 A.2d 351, 1989 D.C. App. LEXIS 99 (1989).

Defense counsel's failure to object to court's jury selection process, which process precluded defendant from exercising fully the tenth peremptory challenge, did not constitute waiver of right to exercise tenth peremptory challenge. D.C. Code §§ 22-2204, 23-105(a); D.C. Code SCR, Criminal Rule 24(b). *Butler v. United States*, 377 A.2d 54, 1977 D.C. App. LEXIS 368 (1977).

Defendant's presence at voir dire.

In order to invoke right to be present when prospective jurors' responses are heard at bench, a defendant must request to be present. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

A defendant's right to be present when at voir dire bench conferences when prospective jurors are being questioned is not unlimited, particularly when the safety of the jurors or the efficient administration of justice could be compromised. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Defendants have a right to be present at voir dire bench conferences when prospective jurors are being questioned. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Where a defendant does not make a timely request to be present at voir dire bench conferences when prospective jurors are being questioned, the trial court must weigh the efficient administration of justice against the principle that the presence of the defendant is essential to the legitimacy of criminal justice system. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Right to be present during voir dire bench conferences when prospective jurors are being questioned can be satisfied by alternate procedures where, for example, there are multiple defendants or where security is a problem. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Defendant waived, based on untimely request, the right to be present during voir dire of prospective jurors at bench conferences, where defense counsel waited until after afternoon session started, at a time when court had already questioned 19 prospective jurors at bench, to inform court of defendant's request and to suggest that conferences take place in jury room to minimize possible prejudice from having deputy marshal hovering behind defendant at bench, and trial court had on three previous occasions explained procedure that would be followed for voir dire bench conferences. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Because defendant was in courtroom during entire voir dire process, he had sufficient opportunity to discuss with counsel the prospective jurors' responses and any issues that the questioning revealed, despite denial of defendant's untimely request to be present at individual questioning of prospective jurors at bench. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Jury pool.

On Batson claim that prosecutor has used peremptory challenges in manner violating equal protection clause, defendant must first make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race; if such showing is made, burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question; finally trial court must determine whether the defendant has carried his burden

of proving purposeful discrimination. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

In substituting alternate juror, trial judge was not required to voir dire deliberating jurors to see whether they could lay aside conclusions already formed and obey instruction to begin deliberations anew. *McCallum v. United States*, 808 A.2d 1242, 2002 D.C. App. LEXIS 596 (2002).

Trial judge properly retained alternate juror and substituted juror for one who became ill after deliberations began, where judge instructed alternate not to discuss the case with anyone else, and confirmed that alternate had not discussed the case with anyone else, and had reached no decision about case, before making substitution. *McCallum v. United States*, 808 A.2d 1242, 2002 D.C. App. LEXIS 596 (2002).

The impaneling of a fair and impartial jury is the task of the trial judge. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

In order to establish denial of Sixth Amendment right to be tried by jury chosen from pool representing fair cross section of community, defendant must show group alleged to be excluded is distinctive group in community, that group's representation in source from which juries are selected is not fair and reasonable in relation to number of such persons in community, and that underrepresentation results from systematic exclusion of group in jury selection process. U.S. Const. Amend. 6. *Harlee v. District of Columbia*, 558 A.2d 351, 1989 D.C. App. LEXIS 99 (1989).

Absent evidence showing that alleged underrepresentation of men on jury panel was due to their systematic exclusion from random selection process for calling local residents to jury service, defendant failed to establish he was denied his Sixth Amendment right to be tried by jury chosen from pool representing fair cross section of community. U.S. Const. Amend. 6. *Harlee v. District of Columbia*, 558 A.2d 351, 1989 D.C. App. LEXIS 99 (1989).

Absent evidence showing that alleged underrepresentation of men on jury panel was due to their systematic exclusion from random selection process for calling local residents to jury service, defendant failed to establish he was denied his Fifth Amendment right to due process because of discriminatory exclusion or substantial underrepresentation of persons from jury based on sex. U.S. Const. Amend. 5.

Harlee v. District of Columbia, 558 A.2d 351, 1989 D.C. App. LEXIS 99 (1989).

In order to establish violation of Fifth Amendment right to due process because of discriminatory exclusion or substantial underrepresentation of persons from jury, defendant must show underrepresented group is identifiable, distinct class, group has been substantially underrepresented on juries in relation to its representation in population, and jury system at question is susceptible of abuse or not racially neutral. *Harlee v. District of Columbia*, 558 A.2d 351, 1989 D.C. App. LEXIS 99 (1989).

Peremptory challenges.

— Age, peremptory challenges.

Prosecutor's proffer of race-neutral explanation for exercising peremptory strike against male 18-year-old African-American prospective juror, namely his youth, did not render moot determination whether defendant made prima facie case of discrimination under *Batson*, where trial court never determined whether reason was pretextual or reached ultimate issue of unlawful discrimination but based its denial of *Batson* claim solely on defendant's alleged failure to make prima facie showing. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Even where the exclusion of a potential juror is motivated in substantial part by constitutionally permissible factors such as the juror's age, the exclusion is a denial of equal protection and a *Batson* violation if it is partially motivated as well by the juror's race or gender. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

District of Columbia Human Rights Act (DCHRA) does not prohibit use of peremptory challenges based on age. D.C. Code 1981, §§ 1-2511, 23-105(a). *Evans v. United States*, 682 A.2d 644, 1996 D.C. App. LEXIS 175 (1996).

— Discriminatory use, peremptory challenges.

Relevant circumstances to consider in considering a pattern of the prosecutor's exercise of peremptory strikes in the context of a *Batson* claim may include the nature of the case and the race or gender of the defendant and other participants in the trial. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

In considering the pattern of the prosecutor's strikes in the context of a *Batson* claim, it is pertinent to consider both any statistical disparities and discriminatory impacts on the jurors, such as a disproportionate concentration of strikes against jurors of a particular race and/or gender, and any disparate treatment of jurors who are similar except for their race and/or gender, and what, if any, information

was elicited from and about the struck jurors by means of the voir dire and other preliminary inquiries. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

A prima facie case of discrimination in the exercise of peremptory strikes under Batson may rest on a wide variety of evidence, notably including, though not limited to, the pattern of the prosecutor's strikes in light of the composition of the venire and the prosecutor's questions and statements during voir dire examination and in exercising his challenges. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Reasonable suspicions and inferences that discrimination may have occurred in the exercise of peremptory strikes are enough to trigger the Batson inquiry. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

The burden of establishing a prima facie case of discrimination under Batson is not onerous, and is satisfied by significantly less than a preponderance of the evidence. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Where the trial court has decided the ultimate issue of discrimination in the exercise of a peremptory strike on the entire evidentiary record before it, without having determined whether the defendant made a prima facie showing of discrimination, the Court of Appeals' concern on appeal must be with the correctness of that ultimate decision. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Defendant assertions that male, 18-year-old African-American prospective juror stricken by prosecutor was only person on panel who, like defendant, was young black male, and that juror answered no questions during voir dire, and therefore, that prosecutor knew nothing about him other than race, gender, age, employment, and address, was insufficient to establish prima facie case of mixed motive discrimination under Batson, in trial for felony murder and related crimes, and thus, did not trigger further Batson review; exercise of single strike against only prospective juror who was young, black male like defendant had little probative value, prosecutor was not entirely ignorant of salient information of juror, namely, age, that might have justified strike, and defendant failed to show pattern of strikes suggestive of racial or gender bias, especially in view of proportion of African-American jurors ultimately selected to serve. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

The exercise of peremptory strike motivated in part by an impermissible consideration of race and/or gender violates equal protection and Batson. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Discrimination in the exercise of peremptory strikes on the basis of ethnicity is prohibited. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Preserved claims of unconstitutional discrimination in jury selection are not subject to harmless error analysis; the erroneous rejection of a Batson challenge results in a structural defect that infects the entire conduct of the trial from beginning to end, and hence is per se reversible. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

The discriminatory exclusion of even a single juror is objectionable. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

The Constitution prohibits purposeful discrimination on the basis of race or gender in the exercise of peremptory challenges to prospective jurors. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Defendant's claim that prosecutor's exercise of peremptory strike against 18-year-old African-American prospective juror was motivated in part by race and gender discrimination raised cognizable Batson claim, in trial for felony murder and related offenses. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Prosecutor may not avoid the Batson obligation to provide race-neutral explanations for what appears to be a statistically significant pattern of racial peremptory challenges simply by foregoing the opportunity to use all of his challenges against minorities. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

Defendant established prima facie case of discriminatory use of peremptory challenges by prosecutor who used 6 of 10 peremptory challenges to strike all 6 black females on a venire of 37 jurors; black female jurors had furnished no information in voir dire that would have afforded any reason to strike them, prosecutor asked virtually no questions to uncover such reasons, and case involved young black male accused of shooting someone who had assaulted and injured his mother and sister. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

Peremptory challenge may not be based even partially on an unlawful discriminatory reason. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

In deciding whether the defendant has made the requisite showing of discriminatory use of peremptory challenges, the trial court should consider all relevant circumstances, including the pattern of the prosecutor's strikes in light of the composition of the venire and the prosecutor's questions and statements during jury selection. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

Prima facie case of discriminatory use of peremptory challenges can be made out by offering a wide variety of evidence, so long as the sum of the proffered facts gives rise to an inference of discriminatory purpose. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

The burden of establishing a prima facie showing of discriminatory use of peremptory challenges is not onerous, and is satisfied by significantly less than a preponderance of the evidence. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

Whether a defendant has satisfied the burden of making a prima facie case of discriminatory use of peremptory challenges is a question of law, namely, whether the voir dire record of the government's peremptory strikes, as shown by the defendant, raised the necessary inference of purposeful discrimination. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

If prosecutor's stated reason for exercising peremptory strikes does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a permissible reason; it does not matter that the prosecutor might have had good reasons, because what matters is the real reason for the prosecutor's strikes. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

If prosecutor refuses to justify his use of peremptory strikes upon a prima facie showing of discrimination, such a refusal would provide additional support for the inference of discrimination raised by a defendant's prima facie case. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

Prosecutor may not rebut defendant's prima facie case of discriminatory use of peremptory challenges merely by denying that he had a discriminatory motive or affirming his good faith in making individual selections; although peremptories are often the subjects of instinct, and it can sometimes be hard to say what the reason is, when illegitimate grounds like race are in issue, a prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

If the prosecutor tenders race- and gender-neutral reasons to rebut prima facie case of discriminatory use of peremptory challenges, trial court must decide whether the defendant has proved purposeful racial or gender discrimination; the resolution of this factual question comes down to whether the trial court finds the prosecutor's race-neutral and gender-neutral explanations to be credible or pretextual in light of all the relevant evidence. *Robinson v.*

United States, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

If defendant makes prima facie case of discriminatory use of peremptory challenges, the burden shifts to the prosecutor to give a clear and reasonably specific explanation of his legitimate reasons for the strikes, i.e., to offer race- and gender-neutral reasons that do not deny equal protection. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

Defendant makes out a prima facie case of discriminatory use of peremptory challenges by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose, i.e., an inference that the prosecutor has struck jurors on the basis of their race or gender. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

Exercise of peremptory challenges to discriminate against prospective jurors on the basis of race or gender is unconstitutional; each type of discrimination offends the Equal Protection Clause of the Fourteenth Amendment and the equal protection component of the Fifth Amendment's Due Process Clause. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

— In general.

Once a prosecutor has offered a race- and/or gender-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing becomes moot. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Defendant's exercise of peremptory challenges is not denied or impaired when defendant chooses to use peremptory challenge to remove juror who should have been excused for cause. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Trial judge acted within her discretion in excusing three jurors for hardship reasons after all peremptory strikes allowed by rule had been made, and then granting two additional strikes at request of defense counsel, after she initially granted one strike, where there was substantial parity between parties, and defendant failed to show that any actual prejudice resulted from judge's decision to excuse three jurors, and, specifically, defendant made no showing at all that any member of jury was in fact biased. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Defendants' right to exercise peremptory challenges were not impaired by addition of jury panel to supplement venire after trial court became aware that venire panel might be too small before any peremptory challenges were used up, where both sides had exercised

nine strikes, the same number of strikes before the supplemental panel was brought in, in total, defense received and was able to use 12 peremptory challenges, two more than rule required, and once entire combined venire panel was known, defendants chose to strike only one juror from supplemental panel, and two from original panel, although they had the opportunity, but chose not to strike others from the supplemental panel. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

In order to win reversal on ground that jury selection procedure used by the trial judge frustrated defendants' effective use of peremptory challenges, defendants had to show not only that there was error in trial court's jury selection procedure, but that they suffered prejudice as a result of such error. D.C. Code 1981, § 23-105(a); Criminal Rule 24(b). *Lee v. United States*, 699 A.2d 373, 1997 D.C. App. LEXIS 193 (1997).

Although trial court should have advised at outset of voir dire that a pass would not constitute a strike, fact that judge did not announce such rule until each side had struck seven jury members did not prejudice defendant, in that it came at a time when both sides were in parity, and its effect was thus virtually the same as if it had been made at the start of the proceeding; furthermore, court's manner of conducting the voir dire did not unduly restrict defendant's exercise of his right to make peremptory challenges, even though, as result of alternating pattern of challenges, each side had to accept at least one juror whom he had not had an opportunity to challenge. D.C. Code 1981, § 23-105(a); Criminal Rule 24(b). *Taylor v. United States*, 471 A.2d 999, 1983 D.C. App. LEXIS 541 (1983).

Jury selection method whereby no juror from venire was allowed into box to replace juror struck until each round had been completed denied on last round defendant's right to reject jurors and hence violated defendant's statutory right to exercise ten peremptory challenges, requiring reversal of conviction of unauthorized use of motor vehicle. D.C. Code §§ 22-2204, 23-105(a); D.C. Code SCR, Criminal Rule 24(b). *Butler v. United States*, 377 A.2d 54, 1977 D.C. App. LEXIS 368 (1977).

Where trial court announced that each side would have three peremptory challenges and that a pass would count as a challenge, where, after first two rounds of challenges and after trial court requested Government to exercise its final challenge first, prosecutor replied that Government was satisfied and defense counsel then exercised his last challenge, trial court committed reversible error in departing from procedure it established to allow prosecutor to

subsequently make another challenge, thus allowing Government to make more challenges than the defense. D.C. Code SCR, Criminal Rule 24(b); D.C. Code § 23-105(a). *Armwood v. United States*, 373 A.2d 895, 1977 D.C. App. LEXIS 318 (1977).

If the question whether a particular peremptory challenge was discriminatorily exercised is to be resolved with any pretense of authority or accuracy, the amount of time and resources that will have to be devoted to the inquiry may be very substantial. To permit inquiry into the basis for a peremptory challenge tends to force the peremptory challenge to collapse into a challenge for cause. Although the prosecutor's explanation of a peremptory challenge need not rise to the level justifying a challenge for cause, some sort of explanation is required. *United States v. Cosby*, 115 WLR 721 (Super. Ct. 1987).

— Number of peremptory challenges.

Trial court judge's error, if any, in granting two additional peremptory strikes to each side, in contravention of rule of criminal procedure and statute, was not plain error, where it was defendant's counsel who requested two additional strikes, rather than one originally allowed by judge, and defendant did not show that deviation from rule prejudiced any of his substantial rights or resulted in any actual juror bias. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Trial court's granting of additional peremptory strike to state and defendants was proper response to mishap in which juror had mistakenly seated herself as next in order on jury list and did not result in denial of defendants' right to exercise peremptory strikes; state passed on last strike based upon order in which jurors were to be seated in courtroom, and testified that juror in question would have been stricken except for mistaken seating. D.C. Code 1981, § 23-105(a). *Stevens v. United States*, 683 A.2d 452, 1996 D.C. App. LEXIS 193 (1996), writ of certiorari denied by 522 U.S. 883, 118 S. Ct. 211, 139 L. Ed. 2d 146, 1997 U.S. LEXIS 5655, 66 U.S.L.W. 3261 (1997).

The right to a specific number of peremptory challenges of prospective jurors and manner in which the challenges are to be exercised is not constitutionally mandated; nevertheless, defendant's right to challenge a prospective juror without cause is one of the most important rights secured to an accused. D.C. Code 1981, § 23-105(a); Criminal Rule 24(b). *Taylor v. United States*, 471 A.2d 999, 1983 D.C. App. LEXIS 541 (1983).

Defendant was not entitled to three peremptory challenges in selecting jury, in addition to those allowed codefendant; the defendants were properly treated as one defendant in allowance and exercise of challenges. D.C. Code 1961, § 23-107; Municipal Court Rules, Crimi-

nal Division, rule 15. *Yankovitz v. U.S.*, 182 A.2d 889, 1962 D.C. App. LEXIS 367 (Cr.App. 1962).

Review.

Appellate review of the trial judge's ruling as to whether the defendant made out a prima facie case of discrimination under Batson is de novo, for whether a defendant has made out a prima facie case of discrimination is a question of law, namely, whether the voir dire record of the government's peremptory strikes, as shown by the defendant, raised the necessary inference of purposeful discrimination. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Where the trial court has pretermitted the inquiry of racial discrimination in the exercise of peremptory strikes and not reached the ultimate issue, and has instead based its ruling solely on the lack of a prima facie showing, the Court of Appeals has only that ruling to review, and notwithstanding the prosecutor's voluntary proffer of a race-neutral reason for the strike, nothing has occurred to moot the ruling's operative significance. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

The three-step procedure for evaluating a Batson challenge is as follows: first, the defen-

dant must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose; second, if a prima facie showing is made, the burden shifts to the prosecutor or other challenged party to give a clear and reasonably specific explanation of his legitimate reasons for the strikes; and third, if the prosecutor tenders such reasons, the trial court must decide whether the defendant has proved purposeful racial or gender discrimination, a factual question that comes down to whether the trial court finds the prosecutor's race-neutral and gender-neutral explanations to be credible. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

Following trial court's erroneous determination that defendant failed to establish prima facie case of discriminatory use of peremptory challenges by prosecutor against black females, remedy would be reversal of conviction and remand for new trial; no record was made of the prosecutor's justifications for his strikes or of whether the facts supported or undermined those justifications, and inquiry into prosecutor's motives would be futile after delay of over three years. *Robinson v. United States*, 878 A.2d 1273, 2005 D.C. App. LEXIS 386 (2005).

§ 23-106. Witnesses for defense; fees.

The court shall order at any time that a subpoena be issued for service upon a named witness on behalf of a defendant if the defendant makes an application for such an order and makes a satisfactory showing that he is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the prosecuting authority.

(July 29, 1970, 84 Stat. 607, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Competency and credibility of witnesses who have been convicted of crime, see § 14-305.

Prior Codifications. — 1981 Ed., § 23-106. 1973 Ed., § 23-106.

CASE NOTES

ANALYSIS

Construction and application.
Necessity.

Construction and application.

Accused has right to compulsory process for obtaining witnesses in his favor but there are limitations on that right. U.S. Const. Amend. 6.

Davis v. United States, 390 A.2d 976, 1978 D.C. App. LEXIS 397 (1978).

Necessity.

Defendant charged with violating municipal gambling laws was not denied Sixth Amendment right to compulsory process when trial court quashed three subpoenas which had been served on Attorney General of United States,

acting chief of metropolitan police department and director of Maryland lottery, where defendant intended to use their testimony to support his claim of selective enforcement, but he did not make clear showing that testimony of the

officials was essential to prevent prejudice or injustice. U.S. Const. Amend. 6; D.C. Code §§ 22-1501, 22-1502, 22-1505, 22-1508. *Davis v. United States*, 390 A.2d 976, 1978 D.C. App. LEXIS 397 (1978).

§ 23-107. Discharge or acquittal of joint defendant during trial in order to be witness.

(a) When two or more persons are jointly indicted or charged by information, or charged by separate indictments or informations which have been joined for trial, the court may, with the consent of the prosecuting authority, direct that a defendant who has not gone into his defense be discharged so that he may be a witness for the prosecution.

(b) When two or more persons are jointly tried, a person desiring that another defendant testify on his behalf may request a judgment of acquittal on behalf of such defendant, which the court shall consider in the same manner as a motion made by such defendant.

(c) At the request of a defendant who wishes to testify on behalf of another person with whom he is jointly tried, if the evidence against such defendant is sufficient to be submitted to the jury and if such other person consents, the court may submit the case concerning such defendant to the jury separately so that his testimony may not be considered against him by such jury.

(d) A discharge granted pursuant to subsection (a), or an acquittal secured pursuant to subsection (b) or (c), shall be a bar to another prosecution for the same offense of the defendant so discharged or acquitted.

(July 29, 1970, 84 Stat. 607, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-107. 1973 Ed., § 23-107.

§ 23-108. Depositions.

(a) If a material witness for either the prosecution or the defendant resides more than twenty-five miles from the place of holding court, is sick or infirm, or is about to leave the District of Columbia, and the prosecution or the defendant applies in writing to the court for a commission to examine such witness, the court may grant the commission, and enter an order stating for what length of time notice shall be given to the other party before such witness shall be examined. At or before the time fixed in the notice, when the examination is upon written interrogatories, the other party may file cross-interrogatories. When the examination is conducted orally, the other party may cross-examine the deponent. If the other party fails to file written interrogatories or fails to attend an oral examination, the clerk shall file the following interrogatories:

“(1) Are all your statements in the foregoing answers made from your own personal knowledge? If not, show what is stated upon information and give its source.

“(2) State everything you know in addition to what is stated in your above

answers concerning this case favorable to either the prosecution or the defendant.”

(b) The court may order in any case that the examination be conducted orally.

(c) The commission shall issue from the clerk’s office, the examination of the witnesses shall be made and certified, and the return thereof made in the same manner as in civil cases, and unimportant irregularities or errors in the proceedings under the commission shall not cause the deposition to be excluded where no substantial prejudice can be wrought to the prosecution or the defendant by such irregularities or errors.

(d) Copies of the depositions or answers to interrogatories shall be made available to all of the parties upon the completion of the examination.

(July 29, 1970, 84 Stat. 608, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Depositions in civil cases, see § 14-104.

Prior Codifications. — 1981 Ed., § 23-108. 1973 Ed., § 23-108.

§ 23-109. Powers of investigators assigned to United States Attorney.

Any special investigator appointed by the Attorney General and assigned to the United States Attorney for the District shall have authority to execute all lawful writs, process, and orders issued under authority of the United States, and command all necessary assistance to execute his duties, and shall have the same powers to make arrests as are possessed by members of the Metropolitan Police Department of the District of Columbia.

(July 29, 1970, 84 Stat. 608, Pub. L. 91-358, title II, § 210(a); June 3, 1997, D.C. Law 11-275, § 14(a), 44 DCR 1408.)

Prior Codifications. — 1981 Ed., § 23-109. 1973 Ed., § 23-109.

Legislative history of Law 11-275. — Law 11-275, the “Second Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole.

The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

§ 23-110. Remedies on motion attacking sentence.

(a) A prisoner in custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, (2) the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, (4) the sentence is otherwise subject to collateral attack, may move the court to vacate, set aside, or correct the sentence.

(b)(1) A motion for such relief may be made at any time.

(2) A motion for such relief may be dismissed if the government demonstrates that it has been materially prejudiced in its ability to respond to the

motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the movant could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(c) Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. If the court finds that (1) the judgment was rendered without jurisdiction, (2) the sentence imposed was not authorized by law or is otherwise open to collateral attack, (3) there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner, resentence him, grant a new trial, or correct the sentence, as may appear appropriate.

(d) A court may entertain and determine the motion without requiring the production of the prisoner at the hearing.

(e) The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

(f) An appeal may be taken to the District of Columbia Court of Appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(g) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(July 29, 1970, 84 Stat. 608, Pub. L. 91-358, title II, § 210(a); Dec. 10, 2009, D.C. Law 18-88, § 220, 56 DCR 7413.)

Cross references. — Plan for furnishing representation of indigents in criminal cases, see § 11-2601.

Representation of indigents, see §§ 2-1602 and 11-2601.

Prior Codifications. — 1981 Ed., § 23-110. 1973 Ed., § 23-110.

Effect of amendments. — D.C. Law 18-88, in subsec. (b), designated the existing language as par. (1), and added par. (2).

Emergency legislation. — For temporary (90 day) amendment of section, see § 220 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of sec-

tion, see § 220 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 18-88. — Law 18-88, the “Omnibus Public Safety and Justice Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

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Abuse of court process.

Petitioner's second motion for post-conviction relief premised on ineffective assistance of counsel could properly be denied as procedurally barred as an abuse of the writ, unless there was cause for the delay and prejudice resulting from failure to consider the motion. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

Inmate would be barred, as sanction for his abuse of court processes, from filing any prospective pro se submission seeking review of the denial of a petition for writ of habeas corpus, a motion for new trial, issuance or review of the denial of a writ of mandamus or coram nobis, or review of the denial of any other relief sought in a civil action against the United States or others, unless inmate's submission was accompanied by a court order granting him leave to file. D.C. Code 1981, § 23-110; Court of Appeals Rule 27(c); Criminal Rules 33, 35. *Corley v. United States*, 741 A.2d 1029, 1999 D.C. App. LEXIS 268 (1999), writ of certiorari denied by 529 U.S. 1122, 120 S. Ct. 1992, 146 L. Ed. 2d 817, 2000 U.S. LEXIS 3388, 68 U.S.L.W. 3712 (2000).

Alternative sentences.

Nonlawyer's challenges, on cumulative appeals from adjudication of civil contempt and later conviction for criminal contempt resulting from nonlawyer's disregard of injunctions against the unauthorized practice of law, to revocation of his probation and judge's denial of his request for a sentence modification were

rendered moot when nonlawyer's probation expired and he served 21 days of weekend incarceration that judge ordered. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Defendant lacked standing to challenge an alternative sentence that was not actually imposed. Butler v. United States, 614 A.2d 875, 1992 D.C. App. LEXIS 188 (1992), writ of certiorari denied by 506 U.S. 1009, 113 S. Ct. 625, 121 L. Ed. 2d 558, 1992 U.S. LEXIS 7611, 61 U.S.L.W. 3401 (1992).

Authority of court.

District of Columbia Superior Court lacked authority to entertain defendant's motion challenging the effectiveness of appellate counsel under section of District of Columbia Code establishing a procedure for collateral review of convictions, and thus that section of the District of Columbia Code was inadequate to test the legality of defendant's detention, authorizing defendant to petition a federal court for habeas relief; although the District of Columbia Court of Appeals would have allowed defendant to challenge the effectiveness of appellate counsel through a motion to recall the mandate, that was not a remedy provided by the collateral review section of District of Columbia Code. Williams v. Martinez, 586 F.3d 995, 2009 U.S. App. LEXIS 25098 (C.A.D.C. 2009), writ of certiorari denied by 130 S. Ct. 2073, 176 L. Ed. 2d 423, 2010 U.S. LEXIS 2833, 78 U.S.L.W. 3565 (U.S. 2010).

Closing argument.

If the prosecutor's comment during closing arguments is an impermissible expression of personal opinion, the appellate court will nonetheless affirm the conviction, unless the accused suffered substantial prejudice as a result of the comment. West v. United States, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

Assuming that defense counsel's argument in closing that defendant might have picked up the gun used in the murder in order to sell was an admission of guilt rather than an alternative argument, defendant was not entitled to a new trial, where the admission only affected the charge of carrying a pistol without a license, of which defendant was acquitted. Pinkney v. United States, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Assuming that defense counsel's argument in closing that defendant might have picked up the gun used in the murder in order to sell was an admission of guilt on the carrying a pistol without a license charge rather than an alternative argument, such admission was not grounds for reversal of his murder and assault with a deadly weapon convictions; at most

defense counsel's argument placed defendant at the murder scene, but it was not a stipulation to facts that amounted to the functional equivalent of a guilty plea on the murder and assault charges. Pinkney v. United States, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Prosecutor's closing argument in which he referred to a police officer's testimony that the street lights were functioning properly upon the officer's arrival, without also mentioning that the officer arrived on the scene more than an hour after the accident and that a witness testified that the lights were "messed up," was proper in prosecution of defendant, whose car struck and killed pedestrian, for negligent homicide; prosecutor merely posed to the jury a rhetorical question that made reference to testimony it had already heard. Butts v. United States, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

During closing arguments, the parties may make reasonable comments on the evidence and argue all reasonable inferences from the evidence adduced at trial; however, counsel are not permitted to go beyond reasonable inferences and engage in impermissible speculation. Umanzor v. United States, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Determining whether counsel's statements in closing arguments reflect a reasonable inference or impermissible speculation is usually a task best suited to the trial judge, who is on the spot and has a vantage point superior to an appellate court. Umanzor v. United States, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Because a trial court has broad discretion in controlling the scope of closing argument, The Court of Appeals reviews a decision to restrict such argument under an abuse of discretion standard; discretion is abused, however, if the court prevents defense counsel from making a point essential to the defense. Haley v. United States, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

A prosecutor or defense attorney may not go beyond reasonable inference and engage in impermissible speculation during closing argument. Hager v. United States, 791 A.2d 911, 2002 D.C. App. LEXIS 40 (2002), writ of certiorari denied by 543 U.S. 846, 125 S. Ct. 290, 160 L. Ed. 2d 74, 2004 U.S. LEXIS 6032, 73 U.S.L.W. 3208 (2004).

Proper exercise of closing argument is to review the evidence and to explicate those inferences which may reasonably be drawn from the evidence; determining what constitutes a reasonable inference or impermissible

speculation is usually a task best suited to the trial judge. *Hager v. United States*, 791 A.2d 911, 2002 D.C. App. LEXIS 40 (2002), writ of certiorari denied by 543 U.S. 846, 125 S. Ct. 290, 160 L. Ed. 2d 74, 2004 U.S. LEXIS 6032, 73 U.S.L.W. 3208 (2004).

Conclusiveness of adjudication.

Incarcerated employee was collaterally estopped from relitigating facts he alleged in negligence action against his former employer and supervisor for allegedly failing to deactivate his pass key after he returned it to his supervisor following his resignation, as these same facts supported his convictions for fraud and theft-related offenses; criminal indictment stated that employee was issued pass key and that as part of a scheme after his departure, he entered his employer's office without authorization using previously issued key, and transcript from criminal proceeding showed that circumstances of employee's return of key and putative deactivation were litigated. *Hinton v. Shaw Pittman Potts & Trowbridge*, 257 F.Supp.2d 96, 2003 U.S. Dist. LEXIS 5172 (2003), affirmed by 2003 U.S. App. LEXIS 22018 (D.C. Cir. Oct. 27, 2003).

A criminal conviction is conclusive proof and operates as an estoppel on the defendants as to the facts supporting the conviction in a subsequent civil action. *Hinton v. Shaw Pittman Potts & Trowbridge*, 257 F.Supp.2d 96, 2003 U.S. Dist. LEXIS 5172 (2003), affirmed by 2003 U.S. App. LEXIS 22018 (D.C. Cir. Oct. 27, 2003).

Client's allegations of malpractice based on attorney's failure to interview and use witnesses for defense in criminal prosecution encompassed in all material aspects the same claims that client presented in postconviction motion, and, thus, denial of postconviction motion was entitled to preclusive effect in legal malpractice case. D.C. Code 1981, § 23-110. *Bigelow v. Knight*, 737 F. Supp. 669, 1990 U.S. Dist. LEXIS 6844 (1990).

Defendant was not judicially estopped, after filing pro se motion that was styled as a motion to vacate convictions and briefly referred to ineffective assistance of counsel, from subsequently filing a motion to vacate convictions based on ineffective assistance of counsel; motions court did not treat first motion as an ineffective assistance claim but as a motion to correct an illegal sentence on basis of a double jeopardy claim, motions did not take inconsistent positions, allowing defendant to assert present claim would not unfairly prejudice government, and defendant had never obtained a ruling on merits of ineffective assistance claim. *Hardy v. United States*, 988 A.2d 950, 2010 D.C. App. LEXIS 33 (2010).

Record did not "conclusively show" that defendant was entitled to no relief on his ineffec-

tive assistance of counsel claim, and thus trial court was required to hold hearing on defendant's motion to vacate conviction for possession of cocaine with intent to distribute on the basis of trial counsel's failure to file motion to suppress evidence obtained by police in search following Terry stop; although defendant's conduct may have generated a reasonable suspicion of criminal activity, there was little particularized evidence on the record to suggest that defendant was armed and dangerous, as would justify search. *Watley v. United States*, 918 A.2d 1198, 2007 D.C. App. LEXIS 110 (2007).

Appellate court will reverse the trial court's denial of a motion for a mistrial only if it appears irrational, unreasonable, or so extreme that failure to reverse would result in a miscarriage of justice. *Metts v. United States*, 877 A.2d 113, 2005 D.C. App. LEXIS 321 (2005).

While the Court of Appeals gives deference to the trial court's findings of fact, it reviews the court's legal conclusions de novo. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

Whether to permit a defendant to reopen a case after the close of the evidence is committed to the sound discretion of the trial court, and Court of Appeals will reverse only for an abuse of discretion. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

An appellate court reviews de novo the trial court's legal conclusions and makes its own independent determination of whether there was either probable cause to arrest or reasonable suspicion justifying a Terry stop. *Milline v. United States*, 856 A.2d 616, 2004 D.C. App. LEXIS 430 (2004).

Court of Appeals accords the trial court substantial deference in exercising its discretion in handling a sleeping juror because of the court's familiarity with the proceedings, its observations of the witnesses and lawyers and jurors, and its superior opportunity to get a feel for the case; court's own contemporaneous observations of the juror may negate the need to investigate further by enabling the court to take judicial notice that the juror was not asleep or was only momentarily and harmlessly so. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

Collateral estoppel stands for an extremely important principle in the adversary system of justice; it means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in

any future lawsuit. *Holt v. United States*, 805 A.2d 949, 2002 D.C. App. LEXIS 507 (2002).

Doctrine of collateral estoppel is generally applicable only where there has been a conclusive prior resolution of the precise factual question presented in the subsequent proceedings. *Holt v. United States*, 805 A.2d 949, 2002 D.C. App. LEXIS 507 (2002).

Party asserting collateral estoppel must establish that the issue was previously "necessarily determined" in his favor. *Holt v. United States*, 805 A.2d 949, 2002 D.C. App. LEXIS 507 (2002).

The appellate court will reverse a conviction because of insufficient evidence only if it concludes, as a matter of law, that no reasonable juror, acting reasonably, could convict on the evidence presented. *Robinson v. United States*, 797 A.2d 698, 2002 D.C. App. LEXIS 98 (2002), writ of certiorari denied by 540 U.S. 1212, 124 S. Ct. 1491, 158 L. Ed. 2d 139, 2004 U.S. LEXIS 1541, 72 U.S.L.W. 3538 (2004).

Judicial review of the sufficiency of the evidence is deferential, giving full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

The appellate court, when considering claims of evidentiary insufficiency, recognizes the right of the fact-finder to weigh the evidence, resolve issues of credibility, and draw justifiable inferences of fact. *Nowlin v. United States*, 782 A.2d 288, 2001 D.C. App. LEXIS 208 (2001).

Court of Appeals defers to the fact finder's right to weigh the evidence, determine the credibility of witnesses, and draw inferences from the evidence presented. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Judging the credibility of witnesses is the quintessential function of the finder of fact, a task reserved for the jury, not the Court of Appeals. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

When a defendant has failed to raise an available challenge to his conviction on direct appeal, he may not raise that issue on collateral attack unless he shows both cause for his failure to do so and prejudice as a result of his failure. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Doctrine of collateral estoppel does not apply to probation revocation proceedings. *Johnson v. United States*, 763 A.2d 707, 2000 D.C. App. LEXIS 297 (2000).

Collateral estoppel barred client from litigating his claim that his counsel committed legal

malpractice during her representation of him in prosecution for carnal knowledge and sodomy involving four-year-old victim, by failing to investigate his claim that he could not have committed crimes due to fact that his blood pressure medication rendered him impotent; all issues of fact were litigated and determined in ineffective assistance of counsel hearing following his conviction. U.S. Const.Amend. 6; D.C. Code 1981, § 23-110. *Smith v. Public Defender Serv.*, 686 A.2d 210, 1996 D.C. App. LEXIS 265 (1996).

Previous determination that trial counsel for drug defendant was not ineffective for failing to call a chemist to testify that pre-mixed cocaine and heroin not sold on street justified denial of second motion for new trial without hearing and denial of request for special service vouchers to pay investigators to pursue claim. D.C. Code 1981, § 23-110; U.S.C. Const.Amend. 6. *Minor v. United States*, 647 A.2d 770, 1994 D.C. App. LEXIS 158 (1994), writ of certiorari denied by 516 U.S. 935, 116 S. Ct. 347, 133 L. Ed. 2d 244, 1995 U.S. LEXIS 7082, 64 U.S.L.W. 3286 (1995).

Strict principles of res judicata do not apply to motions under rule providing for correction of illegal sentence, but trial court has discretion to refuse to entertain second motion which relies on objections previously advanced unsuccessfully. Criminal Rule 35(a). *Neverdon v. District of Columbia*, 468 A.2d 974, 1983 D.C. App. LEXIS 533 (1983).

Construction and application.

Section is substantially identical to 28 U.S.C. § 2255, and federal court interpretations of that section provide guidance in construing this section. *Butler v. United States*, App. D.C., 388 A.2d 883 (1978); *Gibson v. United States*, App. D.C., 388 A.2d 1214 (1978); *Petta*, 110 WLR 1485 (Super. Ct. 1982).

Section of District of Columbia Code establishing procedure for collateral review of convictions provided forum for "gateway" innocence claims to invoke actual innocence exception, and thus that procedure was adequate to test legality of defendant's detention; consequently, defendant was not authorized to petition federal court for habeas relief on basis that relief under Innocence Protection Act (IPA) was his exclusive remedy and outside of collateral review procedure. *Ibrahim v. United States*, 661 F.3d 1141, 2011 U.S. App. LEXIS 23735 (C.A.D.C. 2011).

When interpreting the "in custody" requirement of District of Columbia statute governing remedies on motion attacking sentence, the Court of Appeals may rely on federal cases construing relating federal habeas statute, since the District of Columbia statute is patterned after and is virtually identical to the

federal statute. *Mitchell v. United States*, 977 A.2d 959, 2009 D.C. App. LEXIS 345 (2009).

Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, for double jeopardy purposes, is whether each provision requires proof of a fact which the other does not. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

Requirement that every judgment be set forth on a separate document, contained in Superior Court rule governing civil appeals, did not apply to order denying petitioner's motion for post-conviction relief, and, as such, trial court was not required to reduce its order to writing; neither Superior Court nor Court of Appeals had adopted federal procedure for either entry of judgment or procedure by which appeals had to be filed from orders entered disposing of claims under statute governing remedies on motions attacking sentence, and, thus there was no requirement that Superior Court or Court of Appeals apply rules governing civil appeals to appeals in post-conviction proceedings. *Williams v. United States*, 878 A.2d 477, 2005 D.C. App. LEXIS 334 (2005), writ of certiorari denied by 551 U.S. 1138, 127 S. Ct. 2988, 168 L. Ed. 2d 715, 2007 U.S. LEXIS 7835, 75 U.S.L.W. 3678 (2007).

Since state statute setting forth remedies on motion attacking sentence was nearly identical to federal statute governing remedies on motion attacking sentence, and state statute was functional equivalent of federal statute, Court of Appeals would look to federal cases interpreting federal statute in interpreting state statute. *Williams v. United States*, 878 A.2d 477, 2005 D.C. App. LEXIS 334 (2005), writ of certiorari denied by 551 U.S. 1138, 127 S. Ct. 2988, 168 L. Ed. 2d 715, 2007 U.S. LEXIS 7835, 75 U.S.L.W. 3678 (2007).

Scope of the remedy provided by state statute setting forth remedies on motion attacking sentence is the same as that provided by federal statute governing remedies on motion attacking sentence. *Williams v. United States*, 878 A.2d 477, 2005 D.C. App. LEXIS 334 (2005), writ of certiorari denied by 551 U.S. 1138, 127 S. Ct. 2988, 168 L. Ed. 2d 715, 2007 U.S. LEXIS 7835, 75 U.S.L.W. 3678 (2007).

On review of defendant's challenge to sufficiency of the evidence, Court of Appeals must view evidence in light most favorable to the government. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

To determine whether new trial is required in interest of justice, the trial court must sit as thirteenth juror and determine whether fair trial requires that claim presented in motion for new trial be made available to jury. Criminal Rule 33. *Geddie v. United States*, 663 A.2d 531, 1995 D.C. App. LEXIS 159 (1995).

Trial court's vacating of defendant's convictions and granting of new trial were so interrelated as to be regarded as unitary error which warranted correction in interest of justice, where trial court, erroneously believing that it had served notice upon government pursuant to statute, mistakenly treated defendant's postsentencing motion as conceded by the government. D.C. Code 1981, § 23-110. *Newton v. United States*, 613 A.2d 332, 1992 D.C. App. LEXIS 181 (1992).

District of Columbia statute governing motion to vacate sentence is nearly identical and functionally equivalent to federal habeas corpus statute governing motion to vacate sentence, and thus District of Columbia courts, in construing District of Columbia statute, may rely on cases construing federal rule. 18 U.S.C. § 2255; D.C. Code § 23-110. *Butler v. United States*, 388 A.2d 883, 1978 D.C. App. LEXIS 471 (1978).

This section was "deliberately patterned" after the federal habeas statutes. As a result, the language in both statutes is "substantially identical." Based on this similarity, the Court of Appeals has repeatedly turned to federal court interpretations of 28 U.S.C. § 2255 for guidance. In fact, Supreme Court decisions that concern federal habeas challenges are the established standards applicable to this section. *United States v. Muskelly*, 124 WLR 1389 (Super. Ct. 1996).

Counsel for accused.

— Adequacy of representation by counsel for accused.

Test applied to ineffective assistance of counsel claim raised by motion pursuant to this section is whether the representation by counsel was so grossly incompetent as to blot out the essence of the defense. *Cunningham v. United States*, App. D.C., 408 A.2d 1240 (1979); *Wesley v. United States*, App. D.C., 449 A.2d 282 (1982); U, 110 WLR 1181 (Super. Ct. 1982).

A motion for new trial alleging ineffective assistance of counsel does not automatically require a hearing. *Cunningham v. United States*, App. D.C., 408 A.2d 1240 (1979); *Wesley v. United States*, App. D.C., 449 A.2d 282 (1982); U, 110 WLR 1181 (Super. Ct. 1982).

The alleged failure of appellate counsel, who represented defendant convicted of first degree murder while armed and other offenses, in violation of District of Columbia law, to raise certain arguments and present evidence in connection with his postconviction motions, pursuant to District of Columbia law, could not support claim of ineffective assistance of appellate counsel. *Wright v. Stansberry*, 759 F.Supp.2d 49, 2011 U.S. Dist. LEXIS 326 (2011).

Habeas court lacked jurisdiction to decide claim of ineffective assistance of appellate

counsel asserted by petitioner convicted of first degree murder while armed and other offenses, in violation of District of Columbia law, based on counsel's failure to file direct appeal following petitioner's resentencing; petitioner failed to establish that he raised the resentencing claim in his postconviction motion filed in District of Columbia court, and he failed to explain why such a postconviction motion would be inadequate or ineffective. *Wright v. Stansberry*, 759 F.Supp.2d 49, 2011 U.S. Dist. LEXIS 326 (2011).

Defendant was not denied effective assistance of counsel due to appellate counsel's purported failure to argue on direct appeal that trial counsel failed to effectively litigate his motion to suppress evidence, based in large part on alleged suggestive identification of him at crime scene, where trial counsel preserved suppression issues for appeal and appellate counsel advanced them on appeal, and appellate court rejected defendant's claims on merits. *Graham v. Bledsoe*, 841 F.Supp.2d 134, 2012 U.S. Dist. LEXIS 9379 (2012), appeal dismissed by 2012 U.S. App. LEXIS 21830 (D.C. Cir. Oct. 18, 2012).

District of Columbia inmate's remedies under local law were not inadequate or ineffective to test legality of his detention, and thus inmate could not challenge in federal habeas proceeding his conviction and sentence based on denial of his chosen counsel, even though his prior attempts to challenge his conviction and sentence in District of Columbia courts were not successful, where inmate vigorously contested his conviction and sentence, both in Superior Court by filing motions for post-conviction relief and by appealing unfavorable rulings to D.C. Court of Appeals, and his allegations of error by Superior Court properly were raised in and decided by Court of Appeals. *Pinkney v. United States*, 802 F.Supp.2d 28, 2011 U.S. Dist. LEXIS 88285 (2011), appeal dismissed by 2012 U.S. App. LEXIS 2806 (D.C. Cir. Feb. 10, 2012).

Petitioner's failure to file motion to recall mandate for ineffective assistance of counsel with District of Columbia Court of Appeals, in connection with his criminal convictions for various offenses including first-degree murder and armed robbery, precluded federal habeas relief; petitioner had available avenue for relief available to him regarding his claims, and did not demonstrate any inability to seek relief before District of Columbia Court of Appeals that was not caused by his own failure to file timely motion. *Baisey v. Stansberry*, 777 F.Supp.2d 1, 2011 U.S. Dist. LEXIS 21896 (2011).

District of Columbia prisoner's failure to challenge on remand Superior Court's denial of his post-conviction motion for relief under the Innocence Protection Act, or to file motion in District of Columbia Court of Appeals to recall

its mandate affirming in part and reversing in part his felony convictions, did not render his remedy in District of Columbia Court of Appeals inadequate or ineffective, and thus federal court lacked authority to entertain prisoner's petition for federal habeas relief. *Chase v. Rathman*, 765 F.Supp.2d 1, 2011 U.S. Dist. LEXIS 16953 (2011).

Trial counsel was not deficient for failing to call forensic pathologist as witness at trial on second-degree murder charges, even though the pathologist was identified by appellate counsel and submitted affidavit in proceedings collaterally attacking the conviction to show that he would have testified that the cause of victim's death was more likely victim's surgery and life support than the punch thrown by defendant, where trial counsel was not aware of the pathologist's existence at time of trial. *Strozier v. United States*, 991 A.2d 778, 2010 D.C. App. LEXIS 140 (2010).

Motion to vacate convictions based on alleged ineffective assistance of trial counsel was not procedurally barred by the denial of previous pro se requests, filed after affirmance of convictions, that sought to revive defendant's direct appeal by having it filed by competent appellate counsel, and to raise and litigate the ineffective assistance claim. *Hardy v. United States*, 988 A.2d 950, 2010 D.C. App. LEXIS 33 (2010).

An appellant alleging the constitutional ineffectiveness of his trial counsel must demonstrate both deficient performance and prejudice in order to merit post-conviction relief. *Freeman v. United States*, 971 A.2d 188, 2009 D.C. App. LEXIS 176 (2009).

Any deficiency in defense counsel's failure to raise objection under Confrontation Clause, in drug prosecution, to introduction of chemist reports without testimony of declarant chemist did not prejudice defendant and was not ineffective assistance warranting relief from conviction, where government could have called chemist to testify had objection been raised. *Ottis v. United States*, 952 A.2d 156, 2007 D.C. App. LEXIS 843 (2008).

Defendant's failure, in moving for new trial on ground of ineffective assistance, to provide an affidavit, declaration, or other credible proffer from the three witnesses proposed by defendant whom counsel declined to call was, in itself, a sufficient ground for rejecting without a hearing all allegations of ineffectiveness based on withholding such witnesses. *Ransom v. United States*, 947 A.2d 1127, 2008 D.C. App. LEXIS 223 (2008).

Trial court could deny without a hearing a motion for new trial that included allegations that trial counsel rendered ineffective assistance in drug prosecution by failing to call any of the three witnesses proposed by defendant; counsel made tactical decisions not to call those witnesses, one of whom had been convicted of

attempted robbery and another of whom had history of domestic violence between her and defendant, trial judge reviewed proffered testimonies and concluded they would have been of limited value and would not have altered outcome, and defendant did not make any proffer of third witness's testimony or even list her last name. *Ransom v. United States*, 947 A.2d 1127, 2008 D.C. App. LEXIS 223 (2008).

There is a presumption that a trial court considering claims of ineffective assistance of counsel alleged in a motion for post-conviction relief should conduct a hearing on the motion. *Jackson v. United States*, 940 A.2d 981, 2008 D.C. App. LEXIS 8 (2008).

When defendant in a motion attacking sentence raises a claim of ineffective assistance of counsel, there is a presumption that the trial court should conduct a hearing; this presumption is even stronger when the claim of ineffectiveness is based on facts that are not already disclosed in the record. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

Evidentiary hearing was warranted on defendant's claim in motion attacking sentence that trial counsel was ineffective for failing to interview alleged accomplice or to investigate possibility of calling accomplice as a witness at trial to provide potentially exculpatory testimony, in prosecution for distribution of heroin; it could not be discerned how, without hearing from counsel, trial court reached conclusion that not calling accomplice to testify reflected a strategy decision rather than a negligent omission or counsel's failure to communicate with defendant, and, if credited, accomplice's sworn statement that he never received drugs or money from defendant on date of controlled drug buy would have been exculpatory to defendant. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

No evidentiary hearing was required on defendant's claim in motion attacking sentence that trial counsel was ineffective for failing to properly advise defendant regarding acceptance of a plea offer; defendant's affidavits told trial court little more than that defendant was thinking about taking a guilty plea, and that counsel presented some reasons why trial would be a better option, and affidavits gave trial court no reason for concluding other than that counsel's evaluation of weaknesses of government's case was reasonable professional assistance. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

No evidentiary hearing was required on defendant's claim in motion attacking sentence that trial counsel was ineffective due to lack of preparation for trial, i.e., meeting with defendant only six or seven times for five to ten minutes at a time, with the sole exception of one 20-minute interview; defendant failed to

suggest what additional preparation could have been done if counsel had met with him longer or what topics of conversation could have been covered that were not, and, without such information, motion was vague and conclusory. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

Any question regarding the appropriateness of a hearing on motion attacking sentence which alleges ineffective assistance of counsel should be resolved in favor of holding a hearing. *Jones v. United States*, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

Evidentiary hearing was warranted on defendant's claim in motion to vacate conviction that trial counsel was ineffective in trial for conspiracy to commit murder and related crimes for failing to present alibi witness and other witnesses who would have testified that co-defendant had admitted to shooting and killing victim; proffered evidence would not have been cumulative, since no comparable evidence was presented at trial, evidence was consistent with defendant's theory of case, was highly material, and would have undermined prosecution's case, and evidence of defendant's guilt, while substantial, was not so strong such that there was no reasonable probability that exculpatory evidence could have raised reasonable doubt in jurors' minds. *Long v. United States*, 910 A.2d 298, 2006 D.C. App. LEXIS 579 (2006), dismissed by 593 F. Supp. 2d 50, 2009 U.S. Dist. LEXIS 42 (D.D.C. 2009).

Defendant was not entitled to evidentiary hearing on postconviction allegation that trial counsel rendered ineffective assistance in prosecution for murder and non-homicide charges by conceding defendant's guilt for non-homicide charges; trial counsel was deeply engaged in representation of defendant, in that he filed pretrial motions to suppress defendant's videotaped statement and other crimes evidence, actively argued these issues at hearings before the court, and vigorously cross-examined the government's witnesses at trial, and the result of counsel's efforts was that, despite the strong evidence against the defendant, the jury was unable to reach a verdict on the murder charges. *Cade v. United States*, 898 A.2d 349, 2006 D.C. App. LEXIS 209 (2006).

Trial counsel's failure to put forth evidence showing that defendant did not own vehicle, and that, because of this, defendant had no knowledge of gun underneath seat, did not prejudice defendant, and thus could not amount to ineffective assistance of counsel; even if defendant's trial counsel had offered vehicle ownership evidence, it was unlikely that it would have overcome government's evidence of guilt, and thus, defendant could not show with any certainty that his trial counsel's alleged omissions substantially swayed out-

come of his case. *Jeffrey v. United States*, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

In the overwhelming majority of cases, it is inappropriate to raise the issue of ineffective assistance of counsel on direct appeal. *Johnson v. United States*, 883 A.2d 135, 2005 D.C. App. LEXIS 488 (2005).

A guilty plea cannot stand if counsel provides materially erroneous information about the sentencing consequences of the plea, including a promise of a specific sentence, and the defendant relies upon such advice. *Hilliard v. United States*, 879 A.2d 669, 2005 D.C. App. LEXIS 384 (2005).

Defendant was not entitled to hearing on his motion seeking postconviction relief based on counsel's alleged ineffective assistance in failing to present witness in aggravated assault prosecution; defendant offered no written statement from witness, and defendant failed to provide any credible evidence of alleged witness's existence, and defendant was given additional time in which to obtain more credible statement. *Metts v. United States*, 877 A.2d 113, 2005 D.C. App. LEXIS 321 (2005).

Defendant was not entitled to hearing on his motion seeking postconviction relief based on counsel's alleged ineffective assistance in failing to present witness in aggravated assault prosecution; witness's statement offered no hint of what, if anything of relevance, witness observed regarding the event in question, and defendant was given additional time in which to obtain more credible statement. *Metts v. United States*, 877 A.2d 113, 2005 D.C. App. LEXIS 321 (2005).

Defendant was not entitled to hearing on his motion seeking postconviction relief based on counsel's alleged ineffective assistance in failing to present witness in aggravated assault prosecution; witness's unsworn statement was based on inadmissible hearsay, and defendant was given additional time in which to obtain more credible statement. *Metts v. United States*, 877 A.2d 113, 2005 D.C. App. LEXIS 321 (2005).

Defendant was not entitled to hearing on his motion seeking postconviction relief based on counsel's alleged ineffective assistance in failing to present witness in aggravated assault prosecution; witness's statement was unsworn and did not provide exculpatory evidence, statement was contradicted by defendant's own version of events, and defendant was given additional time in which to obtain affidavit or "other credible proffer" from witness. *Metts v. United States*, 877 A.2d 113, 2005 D.C. App. LEXIS 321 (2005).

In reviewing trial court rulings on alleged ineffectiveness of counsel, the Court of Appeals accepts trial court findings of fact unless they lack evidentiary support, and the Court reviews questions of law de novo. *Jenkins v.*

United States, 870 A.2d 27, 2005 D.C. App. LEXIS 39 (2005).

To establish prejudice, as element of ineffective assistance of counsel, defendant must show that if counsel had not erred, there is a reasonable probability that the result would have been different. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

In order to prevail on a claim of ineffective assistance of counsel, defendant must show that: (1) his attorney was deficient because his errors were so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment, and (2) counsel's deficient performance so prejudiced the defense as to deprive the defendant of a fair trial, a trial whose result is unreliable. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

The review of a claim of ineffective assistance of counsel will not proceed in a fashion so as to effectively second-guess strategic decisions made by trial counsel. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

In order to prevail on a post-conviction claim of ineffective assistance of counsel, a movant must demonstrate that trial counsel's performance was deficient and prejudicial. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

The Court of Appeals' review of a trial court's determination of whether counsel was ineffective presents a mixed question of law and fact; it will accept the trial judge's factual findings unless they lack evidentiary support in the record, and on those facts the court will conduct a de novo review of the trial court's legal conclusions. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

The court's review of counsel's performance is highly deferential, and the court indulges a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Lopez v. United States*, 863 A.2d 852, 2004 D.C. App. LEXIS 699 (2004).

When assessing the reasonableness of counsel's decisions not to interview or call at trial eyewitness or expert witness on homicide investigations, who allegedly could have offered testimony supporting defendant's self-defense claim in murder prosecution, the court would consider the totality of the circumstances as they existed at the time those decisions were

made. *Lopez v. United States*, 863 A.2d 852, 2004 D.C. App. LEXIS 699 (2004).

The post-conviction trial court's determination that defendant's trial counsel was not constitutionally deficient presented a mixed question of law and fact. *Lopez v. United States*, 863 A.2d 852, 2004 D.C. App. LEXIS 699 (2004).

Defense counsel's alleged failure to raise issue of "double enhancement," was not ineffective assistance, in prosecution for robbery of a senior citizen, given that defendant had five previous convictions for burglary. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

Defense counsel's alleged failure to raise issues concerning second indictment was not ineffective assistance, in prosecution for robbery of a senior citizen, as defendant failed to articulate any specific deficiency or resulting prejudice. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

Defendant failed to show that defense counsel rendered ineffective assistance with respect to defense counsel's alleged failure to attack identification evidence; defense counsel did, in fact, move to suppress showup identification, and cross-examined state's witnesses regarding their identification and description of defendant. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

Defense counsel could not be said to have provided ineffective assistance to defendant on basis that he failed to question certain witnesses, absent proffer by defendant of any evidence as to allegedly exculpatory nature of prospective witnesses. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

On appellate review of claim that trial court erred in denying motion attacking a sentence for ineffective assistance of counsel, Court of Appeals applies Strickland standard. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

For purposes of a Monroe-Farrell inquiry into a defendant's pre-trial claim of ineffective assistance of counsel, direct inquiry of the defendant may be necessary when the record is

devoid of the defendant's views regarding any alleged ineffectiveness. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

The nature of a Monroe-Farrell inquiry into a defendant's pre-trial claim of ineffective assistance of counsel is within the trial court's discretion. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

For purposes of a Monroe-Farrell inquiry into a defendant's pre-trial claim of ineffective assistance of counsel, the trial court must put to defense counsel, and to the defendant, if necessary, on the record, specific questions designed to elicit whether or not the criteria of professional competence have been met; the court need not attempt to examine every conceivable deficiency in the representation. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

Petitioner's first motion for post-conviction relief on basis of ineffective assistance of counsel was on grounds other than conflict of interest, and thus second motion, which made claim of ineffectiveness of trial counsel based on alleged conflict of interest, was not improper successive motion, given that it raised new claim. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

To protect a defendant's right to conflict-free counsel, the trial court has an affirmative duty to inquire into the effectiveness of counsel whenever the possibility of a conflict becomes apparent before or during trial. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Trial court was entitled to refuse defendant's waiver of his right to conflict-free representation; defendant had no way of knowing exactly what valuable information he might have been required to refrain from placing before the jury in regards to counsel's cross-examination of jailhouse informant due to his counsel's conflict of interest from his previous representation of informant. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

The standard of review on appeal of a claim for ineffective counsel presents a mixed question of law and fact. *Butler v. United States*, 836 A.2d 570, 2003 D.C. App. LEXIS 693 (2003).

Trial tactical decisions generally do not result in a finding of ineffective assistance of counsel. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Any pretrial claim of counsel's ineffectiveness must be specific and detailed; general assertions that a defendant wants a new lawyer are not enough to trigger a Monroe-Farrell inquiry. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Even assuming that a Monroe-Farrell inquiry was warranted, trial court's discussion was sufficient to enable the court to ascertain just why defense counsel was seeking to withdraw; court explored on the record counsel's reasons for seeking to withdraw, and although defendant claimed that, because his counsel failed to advise him of the option of the diversion program, counsel was ineffective and therefore should have been permitted to withdraw, that did not matter because defendant was not eligible for diversion, defendant's exclusion from the diversion program was the result of his self-defense claim, not of any failure by defense counsel to alert him about the program earlier. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Defense counsel was not ineffective for failing to call any witnesses on defendant's behalf other than defendant since there was nothing in the trial record to indicate that any witnesses other than defendant could have provided any testimony relevant to the defense. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Monroe-Farrell inquiry is usually required when either the defendant or his counsel raises the issue of counsel's possible ineffectiveness before trial. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Defense counsel was not ineffective in closing argument, which consisted mainly of a fable warning the jurors not to rush to judgment on circumstantial evidence, rather than addressing or contesting the points made by the prosecutor; the fact that defense counsel's argument did not result in an acquittal was not counsel's fault, but rather was due to the government's strong case. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

There is a presumption in favor of holding a hearing on a motion to set aside sentence based on ineffective assistance of counsel that requires an inquiry into matters outside the record. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

In almost every instance where the credibility of counsel versus the credibility of the defendant is at issue in a motion to set aside sentence based on ineffective assistance of

counsel, the court can resolve the conflict only by conducting an evidentiary hearing. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Where the defendant alleges in motion to set aside sentence based on ineffective assistance that counsel failed to call a particular witness to testify on the defendant's behalf, an evidentiary hearing is normally required, even though counsel may have had valid reasons for not calling the witness, because the reasons are usually not in the record. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Summary denial of second motion for postconviction relief as successive, which motion was based on claim that counsel was ineffective for failure to call accomplice who would have testified that he committed robbery with someone other than defendant, did not constitute abuse of discretion, where first motion raised ineffective assistance of counsel for failure to present alibi defense, and defendant failed to demonstrate no cause for and prejudice from failure to raise second claim in first motion. *Dobson v. United States*, 815 A.2d 748, 2003 D.C. App. LEXIS 16 (2003).

Trial counsel's failure to present alibi defense, despite introduction of alibi witnesses during voir dire and assertion of alibi defense during opening statement, did not constitute deficient performance that prejudiced defendant, as required to support claim of ineffective assistance of counsel, in trial for armed robbery and carrying pistol without license; decision not to call alibi witnesses was tactical decision in light of victim's was tactical one, insofar as strength of state's identification evidence was weaker than counsel had anticipated, and alibi testimony risked admission of evidence regarding prior crimes. *Dobson v. United States*, 815 A.2d 748, 2003 D.C. App. LEXIS 16 (2003).

To prevail on a motion attacking sentence based on alleged ineffective assistance of counsel, the defendant must allege with particularity those facts and circumstances as would demonstrate the allegations of ineffectiveness. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Ineffective assistance claim, based on counsel's alleged failure to explain plea offer to defendant prior to guilty plea hearing and on counsel's allegedly inadequate preparation for that hearing, would be rejected on appeal of order denying motion to withdraw plea; claim depended ultimately on defendant's testimony,

which motions judge found “wholly unbelievable,” and counsel recounted in detail his discussions with both defendant and the prosecutor, before and during the plea hearing, and his reasons for advising defendant to accept government’s offer. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Defendant failed to establish that trial counsel was ineffective due to counsel’s failure to contact a defense alibi witness, in prosecution for murder; defense counsel testified that he remembered defendant’s case and denied that defendant had ever informed him of the identity of an alibi witness, and appellate counsel for defendant informed the court that the alibi witness was available to testify but appellate counsel and defendant agreed that they were not planning on calling her to testify. *Newman v. United States*, 810 A.2d 918, 2002 D.C. App. LEXIS 671 (2002), amended by 824 A.2d 40, 2003 D.C. App. LEXIS 468 (D.C. 2003).

Defense counsel’s decision not to pursue a line of questioning of complainant about possible financial motive for bringing prosecution for sexual abuse was reasonable trial strategy, and thus could not constitute ineffective assistance. *Newman v. United States*, 810 A.2d 918, 2002 D.C. App. LEXIS 671 (2002), amended by 824 A.2d 40, 2003 D.C. App. LEXIS 468 (D.C. 2003).

Trial counsel’s decision not to pursue line of questioning about complainant’s possible financial motives did not prejudice defendant, and could thus not constitute ineffective assistance; outcome would not have been different, and trial judge at bench trial was aware of financial issue. *Newman v. United States*, 810 A.2d 918, 2002 D.C. App. LEXIS 671 (2002), amended by 824 A.2d 40, 2003 D.C. App. LEXIS 468 (D.C. 2003).

Trial court was not required to hold hearing on defendant’s claim of ineffective assistance; allegations about complainant’s financial motives were before the court, and hearing would have produced no further information. *Newman v. United States*, 810 A.2d 918, 2002 D.C. App. LEXIS 671 (2002), amended by 824 A.2d 40, 2003 D.C. App. LEXIS 468 (D.C. 2003).

Counsel’s decision not to introduce DNA evidence, in prosecution for carjacking, was tactical decision, and thus, could not constitute ineffective assistance. *Winstead v. United States*, 809 A.2d 607, 2002 D.C. App. LEXIS 601 (2002).

Any deficiency on part of trial counsel in failing to report that a juror was sleeping did not prejudice defendant in murder prosecution and thus did not support claim of ineffective assistance of counsel; chances were slim that juror, who dozed off for no more than five minutes, would have missed testimony so vitally important that failing to hear it not only

would have swayed the juror’s decision but enabled that juror also to sway the decisions of the other eleven jurors who found defendant guilty. *Welch v. United States*, 807 A.2d 596, 2002 D.C. App. LEXIS 536 (2002), writ of certiorari denied by 537 U.S. 1132, 123 S. Ct. 914, 154 L. Ed. 2d 821, 2003 U.S. LEXIS 380, 71 U.S.L.W. 3473 (2003).

Failure of defense counsel to call exculpatory witnesses may constitute deficient performance for purposes of determining whether counsel provided effective assistance. *Arrington v. United States*, 804 A.2d 1068, 2002 D.C. App. LEXIS 483 (2002).

Attorney’s failure to question prospective jurors about exposure to pretrial publicity about defendant more than one year before trial was not shown to be ineffective assistance; nothing indicated that the attorney rendered deficient performance or that any juror was aware of the accounts. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

A claim of ineffective assistance of counsel presents mixed questions of law and fact, and an appellate court defers to any relevant findings of fact if it is supported by the evidence; appellate court, however, owes no deference on the ultimate question of law. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

Trial tactical decisions generally do not result in a finding of ineffective assistance of counsel. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

An appellate court does not second-guess trial counsel’s strategic choices because many alternative tactics are available to defense attorneys and their actions are often the products of strategic choices made on the basis of their subjective assessment of the circumstances existing at trial. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

Mere errors of judgment and tactics as disclosed by hindsight do not, by themselves, constitute ineffective assistance of counsel. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

A court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

Defense counsel’s questioning of detective in murder prosecution, which led detective to state that a witness had identified defendant from a suggestive photographic array but believed defendant had longer hair, and led detective to state that, upon being asked by prosecutor, that defendant admitted he had cut his

hair subsequent to commission of robbery, both of which had been deemed inadmissible at pretrial, was deficient, for purposes of ineffective assistance of counsel claim; introduction of witness's identification eviscerated the defense strategy to isolate and create doubt about the government's key witness against defendant. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

The trial court's failure to conduct an evidentiary hearing on defendant's motion attacking sentence based on alleged ineffective assistance of counsel was an abuse of discretion; the courts had a presumption in favor of an evidentiary hearing, and counsel failed to uncover evidence which established that defendant had not previously been convicted of assault, which would have prevented the introduction of defendant's prior murder conviction as impeachment evidence. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

The ineffectiveness of appellate counsel must be litigated as an independent claim, which requires a recall of the mandate of the direct appeal. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

A reasonable tactical decision will not support a claim of ineffectiveness of counsel. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Prejudice from attorney's deficient performance in failing to file motion cannot be shown where the motion, if filed, would not have been successful. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

There is no basis for finding ineffectiveness for counsel's refusal to present testimony which is not helpful and which he suspects might be false. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Although there is a presumption in favor of holding a hearing on a motion alleging ineffective assistance of counsel, a hearing is unnecessary when the motion consists of: (1) vague and conclusory allegations; (2) palpably incredible claims; or (3) allegations that would merit no relief even if true. *Robinson v. United States*, 797 A.2d 698, 2002 D.C. App. LEXIS 98 (2002), writ of certiorari denied by 540 U.S. 1212, 124 S. Ct. 1491, 158 L. Ed. 2d 139, 2004 U.S. LEXIS 1541, 72 U.S.L.W. 3538 (2004).

Even assuming that trial counsel performed deficiently by failing to state the reasons for objecting to detective's "opinion" testimony explaining why detective had not believed witness' initial statements that he had not seen the shooting, defendant was not prejudiced, in prosecution for first-degree murder while armed; the prosecutor articulated why the question was proper, and the judge understood the reasoning behind counsel's objection. *Robinson v. United States*, 797 A.2d 698, 2002 D.C. App. LEXIS 98 (2002), writ of certiorari denied

by 540 U.S. 1212, 124 S. Ct. 1491, 158 L. Ed. 2d 139, 2004 U.S. LEXIS 1541, 72 U.S.L.W. 3538 (2004).

The substance and scope of an inquiry in response to a defendant's pretrial challenge to effectiveness of counsel is committed to the sound discretion of the trial court. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

The nature of an inquiry in response to a defendant's pretrial challenge to effectiveness of counsel turns on the specific circumstances presented in each individual case. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

Trial court failed to conduct an adequate inquiry in response to defendant's pretrial challenge to effectiveness of counsel; in respect to defendant's concerns with counsel's preparation for trial and discussion of trial strategy, trial court failed to ask defendant to state his specific complaints about counsel's preparation, trial court did not ascertain the concrete steps taken by counsel in preparation of the case, and trial court failed to ask defendant or counsel whether possible defenses had been discussed with defendant. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

Routine or cursory inquiries of trial counsel are insufficient in responding to a defendant's pretrial challenge to effectiveness of counsel; rather, questioning of defense counsel by the trial judge must be directly, on the record, about the specifics of the defendant's complaint. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

Specific questioning is required in conducting an inquiry in response to defendant's pretrial challenge to effectiveness of counsel because the trial judge must be satisfied that defense counsel conducted appropriate investigation, both factual and legal, and allowed enough time for reflection and preparation for trial. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

Defense counsel's delay in supplementing the motion to vacate sentence, alleging ineffective assistance of counsel, would not have warranted denial of the motion without consideration of the merits; rather, proper course for trial court, when met with what it appeared to consider excessive requests by counsel to defer consideration of the motion, was to reject them and decide the motion on the merits as presented in the papers filed. *Hudson v. United States*, 790 A.2d 531, 2002 D.C. App. LEXIS 8 (2002).

That the defense strategy had a potential drawback, or that an alternative strategy might reasonably have been selected, does not mean that counsel's performance was constitutionally deficient. *Leftridge v. United States*,

780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

In prosecution for receiving stolen property, counsel was not ineffective in not using prisoner's property receipt to impeach arresting officer's testimony that he found defendant's house keys in stolen car's ignition, which state argued implied guilty knowledge; officer did not prepare receipt and it did not refute his testimony. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

To succeed on a Sixth Amendment claim of ineffective assistance of counsel, a defendant must demonstrate: (1) that counsel's performance was deficient, and, if so, (2) that the deficient performance prejudiced the defense. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

The proper measure of attorney performance is reasonableness under prevailing professional norms. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

When the performance of trial counsel is evaluated, counsel must be given sufficient latitude to make tactical decisions and strategic judgments which involve the exercise of professional abilities. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

Strategic choices of counsel that are made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable as ineffective assistance. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

Mere errors of judgment and tactics as disclosed by hindsight do not, by themselves, constitute ineffectiveness of counsel. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

In assessing the effectiveness of a choice that counsel made, every effort must be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

In prosecution for receiving stolen property, counsel was not ineffective in eliciting and emphasizing testimony that arresting officer gave defendant keys that were removed from the stolen car; state argued that keys were house keys and defendant's placing them in the car's ignition was an act of deception proving guilty knowledge, which counsel attempted to discredit by arguing that officer's returning keys implied they were never in ignition, as they would have been seized as proof. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

There is a presumption that a trial court presented with a motion to vacate sentence, alleging the ineffective assistance of counsel,

should conduct a hearing. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

The failure to make a proper pretrial investigation, to interview exculpatory witnesses, and to present their testimony constitutes constitutional ineffectiveness of counsel. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

If the existence, identity, or location of a potential exculpatory witness is unknown, counsel, to provide constitutionally effective assistance, is required to make all reasonable inquiries, and to take any other appropriate steps, to find and interview such a witness. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

Defendant's allegations that his trial counsel was ineffective in prosecution for assault, because counsel knew or should have known that two neighbors potentially would have testified that defendant's wife taunted defendant for not fighting her, which went to issue of who was the aggressor, and that such testimony would have allowed counsel to conduct far more effective cross-examination of wife, who was prosecution's only witness, warranted a hearing on defendant's motion to vacate sentence. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

Failure of defendant to present, in form of verified sworn affidavit, potential testimony of two neighbors that defendant's wife taunted defendant for not fighting her, which went to issue of who was the aggressor, or to present in form of verified sworn affidavit defendant's potential testimony that he had given his trial counsel the names of the two witnesses but trial counsel failed to interview them, did not warrant denial of hearing on defendant's motion to vacate his sentence for assault, based on ineffective assistance of counsel; the two neighbors produced signed statements, one of which was framed in quasi-affidavit form, and there was no reason to doubt neighbors' willingness to testify or that defendant would testify in support of his allegations. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

Court of Appeals' scrutiny of counsel's performance is highly deferential, and it will indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.

Walls v. United States, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

When a criminal defendant complains pretrial about the performance of counsel, the trial judge must make an on-the-record inquiry to elicit whether or not the criteria of professional competence have been met and make findings of fact sufficient to permit appellate review of the ability and preparedness of counsel to render effective assistance. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Defense counsel's calling defendant "a malevolent little man" when moving to withdraw did not establish that the hostility between counsel and defendant was of such a nature or magnitude as to create an actual conflict of interest that deprived defendant of the right to effective assistance of counsel, in prosecution for stalking, assault with intent to kill while armed, and other offenses. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

Petitioner's assertion that counsel was "intolerably deficient" in his pursuit of insanity as a defense to stalking, assault with intent to kill while armed, and other offenses was conclusory and unsubstantiated, so as to obviate the need for an evidentiary hearing on motion that sought post-conviction relief on ground of ineffective assistance of counsel. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

Fact that defense counsel stated in his motion to withdraw that defendant falsely accused him of "all kinds" of misconduct did not show that defendant was prejudiced by an alleged conflict between himself and counsel, so as to deprive him of effective assistance in bench trial in which defendant attempted to establish insanity as a defense to stalking, assault with intent to kill while armed, and other offenses; though judge who considered motion was trier of fact, counsel's denial of defendant's allegations was collateral to any defense and therefore did not compromise the insanity defense. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness assistance of counsel claim. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

Determination of whether failure to produce promised evidence is ineffective assistance is necessarily fact-based and depends upon such factors as the nature and extent of the promises made in opening statement, any strategic justifications for the subsequent decision not to

produce the evidence, the explanation provided the jury for the failure to produce the evidence, the presentation of other evidence supporting the promised theory, and generally, the impact upon the defense at trial and upon the jury. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

There is no per se rule that unfulfilled promises by defense counsel during opening statement will result automatically in a finding of deficient performance of counsel and prejudice to a defendant. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

Representation is constitutionally deficient if counsel provides materially erroneous information regarding the parole consequences of a plea, and the defendant relies upon it; to be "materially incorrect," the misadvice must have been such as to fall below an objective standard of reasonableness, and, in addition, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Goodall v. United States*, 759 A.2d 1077, 2000 D.C. App. LEXIS 273 (2000).

When defendant makes claim of ineffective assistance of counsel pretrial, trial court must conduct inquiry sufficient to assess counsel's preparedness and determine whether defendant's claim has merit. *Yancey v. United States*, 755 A.2d 421, 2000 D.C. App. LEXIS 148 (2000).

Even if trial court erred in refusing to conduct further inquiry into defendant's pretrial concerns about trial counsel's preparation, there was no need to remand case for Monroe-Farrell hearing on adequacy of counsel's pretrial preparation, in view of trial court's in-depth inquiry and determination that counsel was prepared constitutionally, on motion for collateral relief. *Yancey v. United States*, 755 A.2d 421, 2000 D.C. App. LEXIS 148 (2000).

Presumption of ineffective assistance of counsel without inquiry into counsel's performance is available when, although counsel is available to assist defendant during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into actual conduct of trial. *Yancey v. United States*, 755 A.2d 421, 2000 D.C. App. LEXIS 148 (2000).

There is presumption that a trial court presented with a motion to vacate sentence alleging the ineffective assistance of counsel should conduct a hearing; in order to uphold the denial of such a motion without a hearing, the reviewing court must be satisfied that under no circumstances could the petitioner establish facts warranting relief. D.C. Code 1981, § 23-110. *Dobson v. United States*, 711 A.2d 78, 1998 D.C.

App. LEXIS 75 (1998), remanded by 815 A.2d 748, 2003 D.C. App. LEXIS 16 (D.C. 2003).

Even if defendant made request that trial counsel arrange for him to appear at bench during voir dire and counsel rejected it, there was not sufficient prejudice to establish ineffective assistance of trial counsel. U.S.C. Const.Amend. 6; D.C. Code 1981, § 23-110. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Defendant was not denied effective assistance of counsel on basis that counsel did not make reasonable efforts to locate police officer who stopped defendant for unrelated reasons shortly before his arrest on drug charges in the absence of any showing of how testimony from that officer would have created a different result of defendant's trial, and allegation that the officer would have been able to provide testimony which would have corroborated defendant's version of the events was insufficient to require hearing on defendant's postconviction motion. D.C. Code 1981, § 23-110(c). *Hollis v. United States*, 623 A.2d 1229, 1993 D.C. App. LEXIS 112 (1993).

Even if defendant's own testimony suggested possibility of alibi and could be stretched to provide basis for alibi instruction, trial counsel was not constitutionally ineffective in failing to try to do so; although testimony might support inference that defendant was somewhere else at time of crime, he was nonetheless in same general area, and his estimates of time were "soft." U.S.C. Const.Amend. 6; D.C. Code 1981, §§ 23-110, 33-541(a). *Hollis v. United States*, 623 A.2d 1229, 1993 D.C. App. LEXIS 112 (1993).

Defendant failed to establish that his counsel was ineffective for failing to call an eyewitness to testify, even though the government had identified the eyewitness as Brady witness and indicated that he might be able to provide exculpatory testimony; defendant did not offer credible indication as to what testimony of the eyewitness might entail. U.S. Const.Amend. 6; D.C. Code 1981, § 23-110. *Ready v. United States*, 620 A.2d 233, 1993 D.C. App. LEXIS 25 (1993).

Rape defendant was not prejudiced by any deficiency in defense counsel's failure to anticipate evidentiary foundation needed to put forth various defenses, including self-defense, since defendant did not testify despite counsel's advice that refusal to testify would in effect be giving up claim of self-defense and defendant's testimony regarding events of day of rape were unbelievable. D.C. Code 1981, § 23-110; U.S.C. Const.Amend. 6. *Johnson v. United States*, 613 A.2d 888, 1992 D.C. App. LEXIS 213 (1992).

Finding of ineffective assistance of counsel is mixed question of law and fact and upon review, will not be reversed if finding is supported by evidence in record. U.S.C. Const.Amend. 6;

D.C. Code 1981, § 23-110. *Johnson v. United States*, 613 A.2d 888, 1992 D.C. App. LEXIS 213 (1992).

Absent prejudice, ineffective assistance of counsel warranting reversal cannot be found. U.S. Const.Amend. 6. *Gooch v. United States*, 609 A.2d 259, 1992 D.C. App. LEXIS 128 (1992).

While there is presumption that trial court presented with motion alleging ineffectiveness of defense counsel should conduct hearing, no hearing is required if specifications of motion are patently frivolous on their face, palpably incredible, or fail to withstand initial checking for verity. U.S. Const.Amend. 6; D.C. Code 1981, § 23-110. *Sykes v. United States*, 585 A.2d 1335, 1991 D.C. App. LEXIS 20 (1991).

Allegation in motion for new trial that trial counsel told defendant that for \$1,500 he would work out a plea agreement and that counsel never again mentioned a plea was not inherently incredible and, in view of earlier plea offer by the government, raised colorable claim of ineffective assistance, thus requiring a hearing. D.C. Code 1981, § 23-110; Criminal Rule 33; U.S. Const.Amend. 6. *Sykes v. United States*, 585 A.2d 1335, 1991 D.C. App. LEXIS 20 (1991).

Defendant failed to show prejudice necessary to support claim of ineffective assistance of counsel arising from counsel's incorrect statement during sentencing hearing that defendant was ineligible for addict exception due to defendant's maintenance of innocence throughout drug trial; prosecutor promptly corrected defense counsel's mistake, after which defense counsel then argued that defendant's prior conviction was not disqualifying. U.S. Const.Amend. 6; D.C. Code 1981, § 23-110. *Gordon v. United States*, 582 A.2d 944, 1990 D.C. App. LEXIS 283 (1990).

Though motion for new trial is not required in order to challenge effectiveness of trial counsel, justice is best served where such a motion is filed, and Court of Appeals will not decide question of ineffective assistance on the basis of incomplete information because defendant has elected to ground claim on a truncated record, where the prosecutor has had no opportunity to submit evidence that defense counsel's decisions were based on tactical considerations. U.S. Const.Amend. 6; D.C. Code 1981, § 23-110. *Mack v. United States*, 570 A.2d 777, 1990 D.C. App. LEXIS 30 (1990).

Defendant who is able to furnish better evidentiary support for claim of representation burdened by conflict of interest through material not provided in record on direct appeal or to frame and document contentions of ineffectiveness not considered on direct appeal is entitled to seek collateral relief in superior court or to bring motion for new trial. U.S. Const.Amend. 6; D.C. Code 1981, § 23-110; Criminal Rule 33.

Fitzgerald v. United States, 530 A.2d 1129, 1987 D.C. App. LEXIS 527 (1987).

Upon request for collateral relief or motion for new trial on grounds of representation burdened by conflict of interest, superior court may order evidentiary hearing to supplement the record, and if superior court is willing to grant relief, Court of Appeals will remand to trial court, but if motion in superior court is denied, appeal may be consolidated with direct appeal and record of hearing in superior court will become part of record on appeal. U.S. Const. Amend. 6; D.C. Code 1981, § 23-110; Criminal Rule 33. Fitzgerald v. United States, 530 A.2d 1129, 1987 D.C. App. LEXIS 527 (1987).

Any deficiency in defense counsel's failure to interview three codefendants was not sufficiently prejudicial to armed robbery defendant to allow ineffective assistance of counsel claim under Sixth Amendment; given strength of Government's case, it was highly unlikely that vague and often contradictory testimony of codefendants, none of whom could affirmatively exculpate defendant, would have probably changed the outcome of trial. U.S.C. Const. Amend. 6; D.C. Code 1981, § 23-110. United States v. Frost, 502 A.2d 462, 1985 D.C. App. LEXIS 540 (1985), writ of certiorari denied by 479 U.S. 836, 107 S. Ct. 134, 93 L. Ed. 2d 77, 1986 U.S. LEXIS 3639, 55 U.S.L.W. 3233 (1986).

Defendant was not entitled to have convictions of armed robbery, kidnapping, and rape set aside and a new trial based on allegation of ineffective assistance of counsel in investigating his alibi defense, since defendant's alleged alibi did not necessarily contradict complainant's testimony, and since counsel's actions in case, as characterized by defendant, could not be characterized as so undermining proper function of adversarial process that trial could not be relied upon as having produced a just result. D.C. Code 1981, §§ 23-110, 23-110(a); U.S. Const. Amend. 6. White v. United States, 484 A.2d 553, 1984 D.C. App. LEXIS 546 (1984).

Prisoner was not deprived of due process of law by virtue of fact that his court-appointed counsel filed motion for reduction of sentence on 118th day of 120-day time period allowed for reduction of sentence, allegedly too late for trial court to rule within 120-day limit, thus denying him his opportunity to have such motion considered. Criminal Rule 35; U.S.C. Const. Amend. 5. United States v. Hamid, 461 A.2d 1043, 1983 D.C. App. LEXIS 397 (1983), writ of certiorari denied by 464 U.S. 1046, 104 S. Ct. 718, 79 L. Ed. 2d 180, 1984 U.S. LEXIS 622, 52 U.S.L.W. 3510 (1984).

Test of ineffective assistance of counsel was whether representation was so grossly incompetent as to blot out essence of defense, and

decisions by trial advocate in area of strategy and tactics, though subject to review, should be given considerable latitude. D.C. Code § 23-110. Cunningham v. United States, 408 A.2d 1240, 1979 D.C. App. LEXIS 508 (1979).

Record making clear that main thrusts of defense were clearly presented and that no substantial defenses were hampered in any way did not require finding of ineffective assistance of counsel. D.C. Code § 23-110. Cunningham v. United States, 408 A.2d 1240, 1979 D.C. App. LEXIS 508 (1979).

In prosecution for armed robbery, in which only substantial defense alleged by defendant was his lack of knowledge of the offense, and in which defense counsel placed essence of such defense before jury in a reasonably effective manner, defendant was not denied effective assistance of counsel. D.C. Code § 23-110. Glass v. United States, 395 A.2d 796, 1978 D.C. App. LEXIS 369 (1978).

Under "mockery-of-justice" standard of review, judgment of conviction may not be reversed because of ineffective assistance of counsel unless counsel's advocacy may be characterized as so grossly deficient that accused's trial thereby degenerated into a farce and mockery of justice. U.S. Const. Amends. 6, 14. Monroe v. United States, 389 A.2d 811, 1978 D.C. App. LEXIS 488 (1978), writ of certiorari denied by 439 U.S. 1006, 99 S. Ct. 621, 58 L. Ed. 2d 683, 1978 U.S. LEXIS 4162 (1978).

Fact that motion to vacate guilty plea alleges ineffective assistance of counsel based upon factual circumstances outside record does not, automatically, require hearing; rather, specifications of motion must be sufficient to indicate absence of fair trial in real sense of that term, must not be couched in conclusory terms with essentially no factual foundation, or must not be patently frivolous on their face, even if true. D.C. Code § 23-110. Gibson v. United States, 388 A.2d 1214, 1978 D.C. App. LEXIS 476 (1978).

Defendant's motion for relief under this section was granted and his conviction and sentence were vacated where his counsel failed to obtain and interpret relevant medical records and where defendant was prejudiced thereby. United States of Am. v. Berry, 123 WLR 265 (Super. Ct. 1995).

An ineffectiveness claim grounded on failure to assert Interstate Agreement on Detainers Act rights is subject to review on a writ of habeas corpus or motion pursuant to this section. United States v. Jones, 120 WLR 2441 (Super. Ct. 1992).

Trial counsel's failure to move for dismissal based upon defendant's Interstate Agreement on Detainers Act rights did not fall below the standard of reasonableness under prevailing professional norms. United States v. Jones, 120 WLR 2441 (Super. Ct. 1992).

Trial counsel's failure to file a motion to suppress fell below an objective standard of reasonableness under prevailing professional norms. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Trial counsel's performance was deficient in that he should have filed a motion to suppress evidence and his failure to do so could only be characterized as ineffective assistance which entitled defendant to his motion to vacate sentence. *United States v. McCray*, 116 WLR 677 (Super. Ct. 1988).

Where the motion to vacate alleges ineffective assistance of trial counsel, the necessity for a hearing is increased because the nature of a defendant's complaint may necessarily involve matters outside the record. *United States v. McCray*, 116 WLR 677 (Super. Ct. 1988).

Allegations in a motion for relief because of ineffective counsel (1) must indicate the absence of a fair trial, (2) must not be couched in vague and conclusory terms with essentially no factual foundation, and (3) must not be patently frivolous, even if true. Mere errors of judgment as disclosed by subsequent events are not sufficient to establish ineffective assistance. *United States v. Diamen*, 112 WLR 1937 (Super. Ct. 1984).

Defendant's counsel was not ineffective for allowing defendant to sleep in front of the jury. *United States v. Diamen*, 112 WLR 1937 (Super. Ct. 1984).

Even if the tactical decision later turns out to be ill-conceived, hindsight cannot transform such a decision into anything approaching gross incompetence. *United States v. Eastridge*, 110 WLR 1181 (Super. Ct. 1982).

— Appellate counsel for accused.

Appellate counsel's statutory obligation to represent defendant through appeals, including ancillary matters appropriate to proceeding, included duty to pursue and file, during pendency of direct appeal, a postconviction motion requesting hearing on claim of ineffective assistance of trial counsel. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

The appointment of counsel is not required when a defendant raises a pro se motion to attack sentence where the defendant fails to state adequate grounds for relief under such motion. *Shorter v. United States*, 792 A.2d 228, 2001 D.C. App. LEXIS 672 (2001).

Counsel appointed under the Criminal Justice Act to handle murder defendant's direct appeal had a statutory duty to perfect appeal of the denial of motion for postconviction relief alleging ineffectiveness of trial counsel, which appointed counsel filed during the pendency of the direct appeal. *Williams v. United States*, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

When a hearing is required on a prisoner's motion under the Criminal Justice Act for collateral relief from a conviction, appointment of counsel is obligatory. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

The pendency of a direct appeal does not give an indigent prisoner any greater right to appointment of counsel for a motion under the Criminal Justice Act for collateral relief than he would otherwise have. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Prisoner was not entitled to appointed counsel under the Criminal Justice Act to assist in the collateral attack of his convictions for first-degree sexual abuse and kidnapping, which were obtained by his pleading guilty; prisoner's claim that he received ineffective assistance at plea colloquy was not colorable, as prisoner stated at that proceeding that he had sufficient opportunity to confer with counsel, that he understood the insanity defense, and that he did not wish to raise that defense. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Efforts of a prisoner's counsel at making a reasonable inquiry into whether trial counsel provided ineffective assistance and his filing a motion for appointment of counsel are eligible for reimbursement under the Criminal Justice Act by the appellate court as a part of counsel's appellate duties, even if he were unsuccessful in obtaining an appointment from the trial court. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Defendant could not raise ineffective assistance of counsel claim on direct appeal, as extra-record evidence would be required to adjudicate claim, and, because defendant's sentence to probation constituted custody, he could have used collateral procedure to bring ineffective assistance claim. *U.S.C. Const. Amend. 6*; *D.C. Code 1981*, § 23-110. *Snell v. United States*, 754 A.2d 289, 2000 D.C. App. LEXIS 111 (2000).

Mixed question of law and fact presented on consolidated appeals of murder conviction and denial of motion to vacate conviction implicated a basic constitutional liberty, namely, the right of a criminal defendant to the effective assistance of counsel, and Court of Appeals' standard-of-review calculus was required to take into account that important reality. *U.S.C.*

Const.Amend. 6; D.C. Code 1981, §§ 22-2401 to 22-3202, 23-110. *Frederick v. United States*, 741 A.2d 427, 1999 D.C. App. LEXIS 277 (1999).

Question of trial counsel's deficient performance should not be resolved in defendant's favor on appeal without exploration of whether actions of counsel were product of professional judgment; thus, remand is appropriate to allow government to establish at hearing that counsel's actions resulted from reasonable tactical choices. U.S. Const.Amend. 6. *Dantzler v. United States*, 696 A.2d 1349, 1997 D.C. App. LEXIS 137 (1997).

Court of Appeals reviews claims of ineffective assistance of counsel never made in posttrial motion to vacate conviction and sentence on the trial record alone. D.C. Code 1981, § 23-110. *Smith v. United States*, 686 A.2d 537, 1996 D.C. App. LEXIS 259 (1996), writ of certiorari denied by 522 U.S. 839, 118 S. Ct. 115, 139 L. Ed. 2d 67, 1997 U.S. LEXIS 5021, 66 U.S.L.W. 3257 (1997).

Issue of ineffective assistance of appellate counsel can only be litigated through filing of motion to recall mandate in appellate court, and may not be considered by trial court in connection with motion to vacate judgment. U.S. Const.Amend. 6; D.C. Code 1981, § 23-110. *Mayfield v. United States*, 659 A.2d 1249, 1995 D.C. App. LEXIS 118 (1995), writ of certiorari denied by 518 U.S. 1026, 116 S. Ct. 2566, 135 L. Ed. 2d 1083, 1996 U.S. LEXIS 4187, 64 U.S.L.W. 3855 (1996).

Motion to recall mandate will be granted when claim of ineffective assistance of appellate counsel is found to have sufficient merit to justify recall. Court of Appeals Rule 41(c). *Stratmon v. United States*, 631 A.2d 1177, 1993 D.C. App. LEXIS 223 (1993).

Defendant may move to vacate his conviction because of ineffective assistance of appellate counsel by bringing a motion to recall the mandate. Court of Appeals Rule 41(c); U.S. Const.Amend. 6. *Head v. United States*, 626 A.2d 1382, 1993 D.C. App. LEXIS 141 (1993), writ of certiorari denied by 513 U.S. 854, 115 S. Ct. 156, 130 L. Ed. 2d 95, 1994 U.S. LEXIS 6067, 63 U.S.L.W. 3261 (1994).

To succeed on ineffective assistance of appellate counsel claim: (1) appellant must file motion with Court of Appeals to recall mandate; (2) motions division must decide whether to grant motion on basis that claim initially has been found by court to have sufficient merit; and (3) if division finds such merit in claim, direct appeal is revived by granting motion to recall mandate, and court will then proceed to determine whether appellant was denied effective assistance of appellate counsel. U.S. Const.Amend. 6; Court of Appeals Rule 41(c). *Head v. United States*, 626 A.2d 1382, 1993 D.C. App. LEXIS 141 (1993), writ of certiorari

denied by 513 U.S. 854, 115 S. Ct. 156, 130 L. Ed. 2d 95, 1994 U.S. LEXIS 6067, 63 U.S.L.W. 3261 (1994).

The 180-day requirement for moving to recall mandate is inapplicable to mandates issued prior to effective date of amendment to rule imposing the time limitation. Court of Appeals Rule 41(c). *Head v. United States*, 626 A.2d 1382, 1993 D.C. App. LEXIS 141 (1993), writ of certiorari denied by 513 U.S. 854, 115 S. Ct. 156, 130 L. Ed. 2d 95, 1994 U.S. LEXIS 6067, 63 U.S.L.W. 3261 (1994).

For purposes of appellate review, trial court's determination of whether counsel was ineffective presents mixed question of law and fact. U.S. Const.Amend. 6. *Byrd v. United States*, 614 A.2d 25, 1992 D.C. App. LEXIS 210 (1992).

When claim of pretrial ineffective assistance of counsel, alleged on direct appeal, has been joined with claim of ineffective assistance of counsel at trial, alleged on collateral attack, court must definitively resolve claim of pretrial ineffective assistance of counsel before dealing with inquiry on claim of ineffective assistance of counsel at trial. D.C. Code 1981, § 23-110; U.S. Const.Amend. 6. *Byrd v. United States*, 614 A.2d 25, 1992 D.C. App. LEXIS 210 (1992).

Court of Appeals was unable to review issue of whether defendant's counsel's failure to file notice of appeal constituted ineffective assistance of counsel; ineffectiveness claim was raised for first time on appeal, and thus, there was no record developed on that issue. U.S.C. Const.Amend. 6. *Thomas v. United States*, 586 A.2d 1228, 1991 D.C. App. LEXIS 39 (1991).

Inherent part of appointed counsel's responsibility on direct appeal is to consider whether client's interests require filing of motion to vacate judgment based on ineffectiveness of counsel. D.C. Code 1981, § 23-110. *Doe v. United States*, 583 A.2d 670, 1990 D.C. App. LEXIS 310 (1990).

Duty of appointed appellate counsel to investigate possible ineffective assistance claims is triggered by what appellant and trial counsel tell appellate counsel in response to reasonable thorough inquiry, and by what is reasonably noticeable from trial court's records; accordingly, appointed counsel on direct appeal is obliged to make reasonable inquiry into possibility of ineffective assistance of counsel at trial by researching and developing points thus uncovered that might give rise to claim of ineffectiveness. D.C. Code 1981, § 23-110; U.S. Const.Amend. 6. *Doe v. United States*, 583 A.2d 670, 1990 D.C. App. LEXIS 310 (1990).

If appointed appellate counsel concludes that there exists adequate basis for advancing claim of ineffective assistance of trial counsel, appellate counsel should advise appellant of results of inquiry; next step would be filing of motion to vacate judgment accompanied by request by appellant to Superior Court for it to appoint

appellate counsel or other counsel as postconviction counsel. D.C. Code 1981, § 23-110; U.S. Const. Amend. 6. *Doe v. United States*, 583 A.2d 670, 1990 D.C. App. LEXIS 310 (1990).

Power of court to recall its mandate emanates from inherent power to recall mandate upon showing of good cause. *Streater v. United States*, 478 A.2d 1055, 1984 D.C. App. LEXIS 442 (1984).

Normally, criminal defendant should present claim of ineffective assistance of counsel under statute or under rule, rather than by direct appeal, so that defendant can bring before court evidence outside trial record. D.C. Code 1973, § 23-110; U.S. Const. Amend. 6. *Godfrey v. United States*, 454 A.2d 293, 1982 D.C. App. LEXIS 498 (1982).

There was a procedural irregularity in defendant's appeal from trial court's summary denial of his pro se motion to vacate his sentence when first paper filed was defendant's pro se motion for leave to appeal in forma pauperis, filed in appeals court, but considering District of Columbia Court of Appeals' liberal treatment of prisoners' pro se motions, such court did not believe that defendant's filing "irregularity" affected "substantial rights" and consequently may be disregarded in these circumstances. D.C. Code § 23-110. *Williams v. United States*, 412 A.2d 17, 1980 D.C. App. LEXIS 245 (1980).

An adequate specific showing that prima facie ineffectiveness exists is required before the District of Columbia Court of Appeals will grant the Public Defender Service leave to withdraw and appoint new counsel to determine whether to assert such an issue in the reviewing court or to seek collateral relief in the trial court. D.C. Code § 23-110. *Angarano v. United States*, 329 A.2d 453, 1974 D.C. App. LEXIS 321 (1974).

— Burden of proof, counsel for accused.

To be entitled to a hearing on an ineffective-assistance claim in a motion attacking a sentence, the movant's only burden, prior to hearing, is adequately to allege facts that, if demonstrated, would establish ineffective assistance of counsel; this means pleading with requisite particularity, in light of the full record before the court, that trial counsel's performance was deficient under prevailing professional norms and that the deficient performance prejudiced the defense. *Aiken v. United States*, 956 A.2d 33, 2008 D.C. App. LEXIS 395 (2008).

To demonstrate an actual conflict, for purposes of ineffective assistance of counsel claim premised on conflict of interest, defendant must point to specific instances in the record to suggest an actual conflict or impairment of his or her interests, and show that the alleged conflict of interest obstructs the use of a partic-

ular strategy or defense that is plausible. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

Where there is an actual conflict with respect to legal representation received, the defendant need not demonstrate prejudice in order to obtain relief. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

An ineffective assistance of counsel claim grounded on conflict of interest is not judged by Strickland's prejudice prong, requiring a reasonable probability that but for counsel's errors, the outcome would have been different, but by a more lenient standard of whether the conflict had an impact on a plausible defense strategy. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

In order to establish that his trial counsel was constitutionally ineffective, defendant must demonstrate both deficient performance and prejudice. *Arrington v. United States*, 804 A.2d 1068, 2002 D.C. App. LEXIS 483 (2002).

A defendant bears the burden of overcoming the presumption of counsel's competence. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

A convicted defendant seeking to set aside a conviction on the ground of ineffective assistance must make a two-part showing: first, that counsel's performance was deficient, and second, that the deficient performance prejudiced the defense. *Robinson v. United States*, 797 A.2d 698, 2002 D.C. App. LEXIS 98 (2002), writ of certiorari denied by 540 U.S. 1212, 124 S. Ct. 1491, 158 L. Ed. 2d 139, 2004 U.S. LEXIS 1541, 72 U.S.L.W. 3538 (2004).

Defendant's claim that trial counsel was ineffective, in prosecution for first-degree murder while armed, in failing to call an expert witness to refute witness' claim that witness could identify co-defendants' faces in the flash of gunfire, was vague and conclusory, and thus, defendant was not entitled to a hearing on the claim; defendant did not submit any affidavit, nor even an unsworn statement, summarizing the expected testimony of such an expert. *Robinson v. United States*, 797 A.2d 698, 2002 D.C. App. LEXIS 98 (2002), writ of certiorari denied by 540 U.S. 1212, 124 S. Ct. 1491, 158 L. Ed. 2d 139, 2004 U.S. LEXIS 1541, 72 U.S.L.W. 3538 (2004).

Existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the procedural rule. *Brown v. United States*, 795 A.2d 56, 2002 D.C. App. LEXIS 74 (2002).

To establish ineffective assistance of counsel, the defendant first must show that counsel's performance was deficient, and second must show that the deficient performance prejudiced

the defense. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

Prejudice, as element of ineffective assistance of counsel, requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

In order to prevail on a claim of ineffective assistance of counsel, defendant must show that his attorney's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

The indigent prisoner has the burden to proffer grounds for collateral relief under the Criminal Justice Act at the time appointed counsel is requested. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

To prevail on the application for appointed counsel, an indigent prisoner is required to satisfy the same criteria that would entitle him to a hearing on a motion under the Criminal Justice Act for collateral relief from a conviction. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

On remand to trial court to determine whether defendant was denied effective assistance of counsel because trial counsel's pretrial preparation was not within the range of competence demanded of attorneys in criminal cases, government bore burden of persuasion. U.S. Const.Amend. 6. *Matthews v. United States*, 629 A.2d 1185, 1993 D.C. App. LEXIS 179 (1993).

Concept of "reasonable probability" as it relates to requirement that defendant claiming ineffective assistance of counsel show reasonable probability of different outcome if counsel had been adequate requires defendant to show that there is fair prospect that, with constitutionally adequate counsel, result would have been different. U.S. Const.Amend. 6; D.C. Code 1981, §§ 23-110, 33-541(a). *Webster v. United States*, 623 A.2d 1198, 1993 D.C. App. LEXIS 113 (1993).

Defendant claiming ineffective assistance in counsel's failure to file suppression motion must be prepared, to establish prejudice, to introduce whatever evidence will be necessary to succeed with suppression, U.S.

Const.Amend. 6; D.C. Code 1981, § 23-110. *Wright v. United States*, 608 A.2d 763, 1992 D.C. App. LEXIS 132 (1992).

— In general.

If the government did not expressly or implicitly place the informant in jail for the purpose of eliciting incriminating information from the defendant, the informant is not acting as a government agent, for purposes of defendant's right to counsel. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

Jailhouse informant was not acting as government agent when defendant made incriminating statements, and thus, defendant's right to counsel was not violated; informant was in jail in District of Columbia solely because he was arrested for committing aggravated assault while on release in drug case in which he had entered negotiated plea, and while plea agreement called for him to do undercover work with Federal Bureau of Investigation (FBI), such work occurred exclusively before informant's re-incarceration. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

Trial court abused its discretion in denying defendant's motion on the eve of trial to reinstate his previous counsel after the conflict of interest that had disqualified him allegedly no longer existed, where court based its denial solely on the demands of the criminal docket. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

The decision to grant or deny a motion by an attorney to withdraw as counsel is committed to the discretion of the trial court. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

In general, in the absence of substantial prejudice to the other party or unnecessary delay, an attorney should be allowed to withdraw if there has been a complete breakdown in the attorney-client relationship. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Relevant factors when determining whether to grant attorney's motion for leave to withdraw include the reasons for the request, the delay between the cause of defendant's dissatisfaction and the request, the proximity of the trial date and the likelihood that the trial may have to be postponed, and the general dictates of fairness to both the defendant and the government. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Defense counsel's motion to withdraw, made on the morning of trial, was properly denied; counsel's withdrawal would have prejudiced the government by needlessly delaying the trial, the delay would have interfered with the court's calendaring of other cases, counsel did not tell the court that he wished to withdraw until the case was called for trial, and although

defendant claimed that, because his counsel failed to advise him of the option of the diversion program, counsel was ineffective and therefore should have been permitted to withdraw moments before trial, that did not matter because defendant was not eligible for diversion. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Decision to call witnesses is a judgment left almost exclusively to counsel. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

If a lawyer's breach of fiduciary duty occurs in the course of representation in a criminal trial, a client may claim that ineffective assistance of counsel prejudiced his criminal trial, entitling him to a new trial. *Herbin v. Hoeffel*, 806 A.2d 186, 2002 D.C. App. LEXIS 503 (2002).

Defendant was not entitled to a hearing on his second motion to vacate sentence, which collaterally attacked his conviction for assault with dangerous weapon, where defendant provided no affidavit or other credible proffer to support his allegations of ineffective assistance of counsel. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Defense counsel, like his adversary, must not be permitted to make unfounded and inflammatory attacks on the opposing advocate during jury argument. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Defense counsel, like the prosecutor, must refrain from interjecting personal beliefs into the presentation of his case during jury argument. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Defense counsel has the same obligation as the prosecutor not to misstate the evidence or mislead the jury as to the inferences it may draw, and to refrain from arguments calculated to inflame the passions or prejudices of the jury. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Court appointed appellate counsel who requests postconviction relief on grounds of ineffective assistance of trial counsel is entitled to compensation. D.C. Code 1981, §§ 11-2601(3)(A), 11-2602, 23-110; U.S.C. Const.Amend. 6. *Doe v. United States*, 583 A.2d 670, 1990 D.C. App. LEXIS 310 (1990).

No defendant in a federal or state criminal proceeding may be validly convicted and imprisoned unless he has been afforded right to counsel in accordance with commands of Sixth and Fourteenth Amendments. U.S. Const. Amends. 6, 14. *Monroe v. United States*, 389 A.2d 811, 1978 D.C. App. LEXIS 488 (1978), writ of certiorari denied by 439 U.S. 1006, 99 S.

Ct. 621, 58 L. Ed. 2d 683, 1978 U.S. LEXIS 4162 (1978).

— Post-trial motions, counsel for accused.

Even if District of Columbia prisoner failed to file post-conviction motion to vacate under local law because of appellate counsel's erroneous advice that he could not file such motion, prisoner's failure to file motion did not render local remedy inadequate or ineffective to test legality of his detention, and thus federal court lacked authority to entertain prisoner's petition for federal habeas relief, since it was inefficacy of remedy, rather than personal inability to utilize remedy, that was determinative of whether federal habeas relief was available to prisoner. *Chase v. Rathman*, 765 F.Supp.2d 1, 2011 U.S. Dist. LEXIS 16953 (2011).

Murder defendant was not entitled to evidentiary hearing on claim raised in his motion for post-conviction relief that his trial counsel had rendered ineffective assistance by failing to file a notice of appeal as he had requested her to do, notwithstanding government's concession that defendant was entitled to such a hearing, as it was undisputed that, as part of his written plea agreement with the prosecution, he waived his right to appeal anything other than the legality of sentence imposed on him, sentence imposed on defendant was not in excess of punishment authorized by statute and defendant had not claimed to the contrary, defendant did not raise ineffective assistance claim until almost 13 years after he was sentenced, and even if defendant's allegation was true, counsel's affidavit, stating that if defendant had directed her to file a notice of appeal, she would have advised him that he had given up right to appeal except from imposition of an illegal sentence, explained what her only plausible response to such a direction would have been. *Stewart v. United States*, 37 A.3d 870, 2012 D.C. App. LEXIS 7 (2012).

Trial court did not abuse its discretion by denying without a hearing defendant's post-trial motions alleging trial counsel provided ineffective assistance by failing to present witnesses who allegedly would have provided exculpatory testimony, in trial of defendant for conspiracy to commit first-degree murder, first-degree murder and possession of a firearm during a crime of violence, as the record conclusively showed that defendant was not entitled to relief; defendant did not present affidavits from witnesses stating that they would provide the exculpatory testimony, and trial counsel filed affidavit stating that both witnesses were in custody pending narcotics charges in federal court, and that he elected not to call the witnesses because they had Fifth Amendment issues and he was told by witnesses' attorneys that their testimony would not have been helpful. *Wheeler v. United States*, 977 A.2d 973,

2009 D.C. App. LEXIS 343 (2009), amended by 987 A.2d 431, 2010 D.C. App. LEXIS 211 (D.C. 2010), writ of certiorari denied by 131 S. Ct. 325, 178 L. Ed. 2d 211, 2010 U.S. LEXIS 7488, 79 U.S.L.W. 3204 (U.S. 2010).

Defendant's appellate counsel, who had been appointed under District of Columbia Criminal Justice Act, had statutory obligation to perfect appeal from denial of defendant's second motion for post-conviction relief, which was based on alleged ineffective assistance of defendant's trial counsel, if defendant made timely request for her to do so, where defendant's direct appeal was pending when appellate counsel filed second motion for post-conviction relief. U.S. Const. Amend. 6; D.C. Official Code, 859 A.2d 634 (2001).

Trial court erred in denying defendant's motion for new trial without evidentiary hearing, following convictions for kidnapping while armed, armed robbery, assault with intent to commit rape while armed, and possession of firearm during crime of violence, basis of which motion was ineffective assistance of counsel, where court made credibility determination that defendant had not provided names of exculpatory witnesses without hearing testimony from anyone who had any direct knowledge regarding this disputed fact, as trial attorney never denied or admitted that defendant had provided names, investigator did not testify, and defendant was not permitted to be present. Arrington v. United States, 804 A.2d 1068, 2002 D.C. App. LEXIS 483 (2002).

If the prisoner's post-conviction claim is sufficient for a hearing, it presumably will be colorable enough to warrant appointment of counsel. Wei Hua Wu v. United States, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

In case in which counsel was appointed under the Criminal Justice Act to handle murder defendant's direct appeal, remedy for appointed counsel's failure to perfect appeal of the denial of motion for postconviction relief would be to re-enter judgment so that an appeal from that order could be noted in the required manner, where appointed counsel filed postconviction relief motion during pendency of direct appeal to raise claim of ineffectiveness of trial counsel. Williams v. United States, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

Petitioner seeking postconviction relief was entitled to an evidentiary hearing to determine if counsel rendered ineffective assistance by providing materially incorrect information regarding when petitioner would be eligible for parole if he pleaded guilty to manslaughter while armed. Goodall v. United States, 759 A.2d 1077, 2000 D.C. App. LEXIS 273 (2000).

No distinction is drawn between direct and circumstantial evidence when the Court of Appeals reviews a denial of a motion for judgment

of acquittal. Johnson v. United States, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

Order denying defendant's posttrial request for counsel functioned in effect as rejection on merits of his implied but unarticulated motion to vacate sentence, over appeal from which court had jurisdiction, as trial court based denial of request for counsel on court's own recollection of trial and role of government witness who defendant believed had, contrary to witness' testimony, struck deal with government in exchange for his testimony; court stated that it was inconceivable that information sought by defendant could have affected outcome. D.C. Code 1981, § 23-110. Garmon v. United States, 684 A.2d 327, 1996 D.C. App. LEXIS 218 (1996).

Because defendant had no constitutional right to counsel for his posttrial motion for new trial, he could not prevail on claim that his counsel was constitutionally ineffective in relation to that motion. D.C. Code 1981, § 23-110; U.S. Const. Amend. 6. Lee v. United States, 597 A.2d 1333, 1991 D.C. App. LEXIS 297 (1991).

Fact of pending direct appeal gives appellant who requests postconviction relief on grounds of ineffective assistance of counsel no greater right to authorization of investigative services or trial court appointment of counsel for postconviction motion than appellant otherwise would have had. D.C. Code 1981, § 23-110; U.S. Const. Amend. 6. Doe v. United States, 583 A.2d 670, 1990 D.C. App. LEXIS 310 (1990).

Defendant's letter or motion requesting appointment of counsel to pursue collateral attack on conviction without proffering grounds for relief is inherently defective. D.C. Code 1981, §§ 11-2601(3), 23-110. Jenkins v. United States, 548 A.2d 102, 1988 D.C. App. LEXIS 170 (1988).

Denial of defendant's request for counsel to pursue collateral attack on his conviction was not final order, and it was not appealable under collateral order doctrine; defendant was required to obtain final ruling on merits of motion collaterally attacking conviction before he could appeal order denying appointment of counsel to assist in that effort. D.C. Code 1981, §§ 11-2601(3), 23-110. Jenkins v. United States, 548 A.2d 102, 1988 D.C. App. LEXIS 170 (1988).

Statute governing post-conviction motions attacking sentence did not afford basis for relief for defendant who was convicted of murder after defense council fully and aggressively explored all possible DNA issues, eyewitnesses identified defendant as individual who stabbed victim, guilty verdict was fully supported by the evidentiary record, and conviction was no way related to any deficient performance by the defense council evidence. U.S. v. Cuffey, 132 WLR 385 (Super. Ct. 2004).

— Reservation of grounds for review, counsel for accused.

The mere fact that District of Columbia court

denied on procedural grounds petitioner's motion for post-conviction relief raising claim of ineffective assistance of trial counsel did not establish that District of Columbia code section governing such relief was inadequate or ineffective for consideration of claim, and thus district court lacked jurisdiction to consider petitioner's § 2241 habeas petition raising the same claim. *Earle v. United States*, 808 F.Supp.2d 301, 2011 U.S. Dist. LEXIS 101376 (2011).

Failure of defendant's first appointed appellate counsel to raise issue of conflict of interest in motion for post-conviction relief premised on ineffectiveness of trial counsel and filed during pendency of direct appeal did not procedurally bar defendant from presenting such claim in his second motion for post-conviction relief, given that second motion was also filed while direct appeal was still pending. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

Defendant waived on appeal his argument that his counsel was ineffective for failing to uncover alleged perjury, where defendant failed to raise argument in trial court. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

Defendant was procedurally barred from asserting his claim of ineffective assistance of counsel in his second motion to vacate sentence; defendant failed to demonstrate sufficient cause for his failure to raise the ineffective assistance claim in either his direct appeal after conviction or his first motion to vacate sentence given that defendant was present at his trial and was aware of any alleged errors as they took place. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

If an appellant does not raise a claim of ineffective assistance of counsel during the pendency of the direct appeal, when at that time appellant demonstrably knew or should have known of the grounds for alleging counsel's ineffectiveness, that procedural default will be a barrier to Court of Appeals' consideration of appellant's claim. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

Normally, when reviewing allegations of improper argument by prosecutor, appellate court must determine whether the prosecutor's statements actually were improper and, if so, whether the verdict was substantially swayed by the impropriety. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

Since defense counsel made no objection at trial to the prosecutor's closing argument, appellate court could not reverse unless trial court's failure to intervene sua sponte and take corrective measures amounted to plain error.

Butts v. United States, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

A claim of ineffectiveness of appellate counsel must be raised by filing a motion to recall the mandate in the direct appeal and may not be considered in connection with a motion to vacate judgment. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Post-conviction claims of ineffective assistance of trial counsel were procedurally barred by failure to raise them on direct appeal when different counsel represented the defendant. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Defendants' claim regarding prosecutor's allegedly improper closing arguments in criminal trial was reviewed for plain error because neither defendant objected to allegedly improper statement at trial. *Reaves v. United States*, 694 A.2d 52, 1997 D.C. App. LEXIS 82 (1997).

Even in cases where defendant does not object at trial to attorney's representation, Sixth Amendment violation warranting reversal will be established if defendant demonstrates on appeal that actual conflict of interest adversely affected his lawyer's performance. U.S.C. Const.Amend. 6. *Derrington v. United States*, 681 A.2d 1125, 1996 D.C. App. LEXIS 149 (1996).

Court of Appeals does not consider for first time on appeal those asserted instances of alleged ineffectiveness of counsel which were not presented to trial court at hearing. U.S.C. Const.Amend. 6. *McKenzie v. United States*, 659 A.2d 838, 1995 D.C. App. LEXIS 117 (1995), writ of certiorari denied by 517 U.S. 1127, 116 S. Ct. 1369, 134 L. Ed. 2d 534, 1996 U.S. LEXIS 2297, 64 U.S.L.W. 3657 (1996).

Under plain error review for prosecutor's allegedly improper remarks to which defendant did not object, Court of Appeals must affirm convictions unless impropriety was so prejudicial as to jeopardize the very fairness and integrity of trial. *Bowman v. United States*, 652 A.2d 64, 1994 D.C. App. LEXIS 250 (1994).

Prosecutor's rebuttal argument, stating that defendant's estranged wife was in her home in state of terror when defendant broke in, and referring to mental damage, was not plain error, even though there was nothing in evidence about her ability to sleep at night after intrusion; defense counsel in summation had asked rhetorical question regarding what damage defendant had done to his estranged wife. *Bowman v. United States*, 652 A.2d 64, 1994 D.C. App. LEXIS 250 (1994).

Prosecutor's statements made during closing argument in murder trial, including statement that could have been interpreted as alleging that defendant, rather than codefendant, strangled victim, did not rise to level of plain error, where alleged misstatements by prosecutor

were subject to different interpretations and could not be said to have jeopardized fairness of trial. *Matthews v. United States*, 629 A.2d 1185, 1993 D.C. App. LEXIS 179 (1993).

Prosecutor's misleading statement to the jury, which understated the benefit coparticipant in felony-murder received when he was permitted to plead guilty to second-degree murder in exchange for his testimony against defendant, did not rise to level of plain error in view of fact that challenged conduct consisted simply of two statements in lengthy closing argument which did not go directly to issue of guilt or innocence of defendant. *Townsend v. United States*, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by 481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

In ruling on assertions of prosecutorial misconduct, Court of Appeals generally inquires as to whether misconduct, if it occurred, caused substantial prejudice to defendant, but where defendant makes no objection at trial to any of remarks challenged, applicable standard of review is whether prosecutor's comments amounted to plain error, that is, whether they were so clearly prejudicial to substantial rights of defendant as to jeopardize fairness and integrity of trial. *Arnold v. United States*, 467 A.2d 136, 1983 D.C. App. LEXIS 513 (1983).

Prosecutor's statements on rebuttal that suggested that defendant was untruthful in his testimony at trial did not rise to level of plain error, since in each instance in which prosecutor made remarks implying that defendant's version of events was not credible, it was in context of emphasizing, permissibly, obvious conflicts in defendant's testimony, court instructed jury immediately following rebuttal that they were sole judges of credibility and facts, and Government's case was strong. *Arnold v. United States*, 467 A.2d 136, 1983 D.C. App. LEXIS 513 (1983).

Discretion of court.

Trial court acted within its discretion in denying defendant's motion for a new murder trial based on ineffective assistance of counsel, pursuant to the statute governing remedies on a motion attacking a sentence, and on newly discovered evidence, pursuant to the Innocence Protection Act (IPA), even though defendant argued in part that defense counsel failed to interview and call various persons to testify and that a testifying police officer had been indicted for tax fraud; trial court held a hearing at which it heard testimony from defendant, codefendant, and defense counsel, credited defense counsel's testimony about his conduct and reasonably concluded that he did not perform deficiently, and stated its basis for excluding each of the proposed witnesses. *Paige v. United*

States, 25 A.3d 74, 2011 D.C. App. LEXIS 438 (2011), writ of certiorari denied by 132 S. Ct. 1605, 182 L. Ed. 2d 212, 2012 U.S. LEXIS 1302, 80 U.S.L.W. 3478 (U.S. 2012).

One-sentence denial of defendant's motion to recall the mandate, filed in connection with a claim of ineffective assistance of appellate counsel, was not a procedural bar to subsequent motion to vacate convictions, in view of substantial doubt as to whether ruling on the previous motion was on the merits. *Hardy v. United States*, 988 A.2d 950, 2010 D.C. App. LEXIS 33 (2010).

Decision on whether to hold an evidentiary hearing on a motion for a new trial pursuant to the statute governing motions attacking sentences is committed to the trial court's discretion, but the scope of that discretion is quite narrow. *Aiken v. United States*, 956 A.2d 33, 2008 D.C. App. LEXIS 395 (2008).

Double jeopardy.

Double jeopardy clause compels merger of duplicative convictions for the same offense, so as to leave only a single sentence for that single offense. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

Equal protection.

Equal protection does not require that those tried in federal court contemporaneously with those tried for the same offense in local court of District of Columbia be treated identically. *U.S. Const. Amend. 5. U.S. v. Frady*, 102 S.Ct. 1584, 1982 U.S. LEXIS 95 (U.S. Dist. Col. 1982).

Evidence.

— Admissibility of evidence.

Trial court acted within its discretion by admitting into evidence, in trial on second-degree murder charges, autopsy photographs showing victim's ruptured eye, and exposed brain; trial court deferred ruling on admissibility until viewing the photos and hearing medical examiner testimony, then determined that they were relevant to show that defendant used excessive force when he punched victim in face, and trial court found that the photographs were not gory, as taken in a clinical setting, and were not introduced to inflame the jury, such that their probative value was not substantially outweighed by prejudice to defendant. *Strozier v. United States*, 991 A.2d 778, 2010 D.C. App. LEXIS 140 (2010).

Evaluation and weighing of evidence for relevance and potential prejudice is quintessentially a discretionary function of a trial court, and Court of Appeals owes a great degree of deference to its decision with respect thereto. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

A trial court's determination of the relevance of prior evidence of bad acts is reviewed for an

abuse of discretion. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

Trial judge abused her discretion in declining to review, in camera, allegedly exculpatory statements of witnesses, who allegedly saw three or less persons commit the abduction, in prosecution for murder and kidnapping; defense, bolstered by alibi testimony, was that three people committed kidnapping and murder, that their identities were known, and that defendant was not participant, and government's theory was that four men, including defendant, were involved, and given critical nature of issue whether there were three or four participants in crime, court should have inspected in camera the statements of witnesses. *Boyd v. United States*, 908 A.2d 39, 2006 D.C. App. LEXIS 535 (2006).

Time alone is not controlling in determining the spontaneity of an exclamation, for purposes of determining whether the exclamation is admissible under the excited-utterance exception to the hearsay rule. *Teasley v. United States*, 899 A.2d 124, 2006 D.C. App. LEXIS 219 (2006).

In determining whether a statement is admissible under the excited-utterance exception to the hearsay rule, the ultimate question is whether the statement, as reported at trial, was a spontaneous reaction to the exciting event, rather than the result of reflective thought. *Teasley v. United States*, 899 A.2d 124, 2006 D.C. App. LEXIS 219 (2006).

In a constructive-possession case, the types of conduct that could link a defendant to the contraband may include, but are not limited to, evidence linking the accused to an ongoing criminal operation of which the possession is a part, attempts to hide or destroy evidence, other acts evincing consciousness of guilt such as flight, and evidence of prior possession of the contraband. *Teasley v. United States*, 899 A.2d 124, 2006 D.C. App. LEXIS 219 (2006).

Following factors must be considered in determining whether confession is to be excluded as fruit of illegal arrest are: (1) whether *Miranda* warnings were given, (2) the temporal proximity of the illegal arrest and the confession, (3) the presence of intervening circumstances, and (4) the purpose and flagrancy of the official misconduct. *United States v. McMillian*, 898 A.2d 922, 2006 D.C. App. LEXIS 215 (2006).

The rarity statistic, the database match probability, and the Balding-Donnelly approach, as distinct and independently significant statistical calculations for expressing the significance of a cold hit DNA match based on a database search, were generally accepted in the relevant scientific community, as required for admission of scientific testimony under *Frye* test. *United States v. Jenkins*, 887 A.2d 1013, 2005 D.C. App. LEXIS 647 (2005).

The National Research Council's original recommendation, from 1992, to use the confirmatory loci approach to account for ascertainment bias in database searches for DNA matches by retesting DNA samples using different loci than those originally used to obtain the cold hit was no longer accepted or followed by the relevant scientific community, and thus, such recommendation would not be considered as reflecting a debate in the scientific community, when determining whether expert testimony based on other formulas was admissible as scientific evidence under the *Frye* test to express the significance of a cold hit DNA match. *United States v. Jenkins*, 887 A.2d 1013, 2005 D.C. App. LEXIS 647 (2005).

The issue regarding admission of expert testimony based on a new scientific methodology is consensus versus controversy over a particular technique, not its validity; the court's inquiry is focused on counting scientists' votes, rather than on verifying the soundness of a scientific conclusion. *United States v. Jenkins*, 887 A.2d 1013, 2005 D.C. App. LEXIS 647 (2005).

A proponent of expert testimony based on a new scientific methodology must demonstrate by a preponderance of the evidence that the methodology has been generally accepted in the relevant scientific community. *United States v. Jenkins*, 887 A.2d 1013, 2005 D.C. App. LEXIS 647 (2005).

While courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs. *United States v. Jenkins*, 887 A.2d 1013, 2005 D.C. App. LEXIS 647 (2005).

Where the proponent of the expert testimony is introducing a new scientific technique, appellate review of the trial court's decision whether to admit the expert testimony is *de novo*. *United States v. Jenkins*, 887 A.2d 1013, 2005 D.C. App. LEXIS 647 (2005).

Whether a particular statement is inadmissible as hearsay or admissible under an exception to the hearsay rule is a question of law that the Court of Appeals reviews *de novo*. *Zacarias v. United States*, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

Any determination that the probative value of evidence outweighs its prejudicial effect is quintessentially a discretionary function of the trial court, which the Court of Appeals reviews only for abuse. *Stewart v. United States*, 881 A.2d 1100, 2005 D.C. App. LEXIS 468 (2005), writ of certiorari denied by 547 U.S. 1174, 126 S. Ct. 2348, 164 L. Ed. 2d 859, 2006 U.S. LEXIS 4305, 74 U.S.L.W. 3669 (2006).

A decision on an issue of relevance is entrusted to the trial court's discretion, to which the Court of Appeals owes substantial defer-

ence; the Court of Appeals will overturn such a decision only on a showing of abuse of discretion. *Stewart v. United States*, 881 A.2d 1100, 2005 D.C. App. LEXIS 468 (2005), writ of certiorari denied by 547 U.S. 1174, 126 S. Ct. 2348, 164 L. Ed. 2d 859, 2006 U.S. LEXIS 4305, 74 U.S.L.W. 3669 (2006).

The Court of Appeals reviews for abuse of discretion the admission of a witness's prior recorded testimony due to the witness's present unavailability in subsequent proceedings. *Stewart v. United States*, 881 A.2d 1100, 2005 D.C. App. LEXIS 468 (2005), writ of certiorari denied by 547 U.S. 1174, 126 S. Ct. 2348, 164 L. Ed. 2d 859, 2006 U.S. LEXIS 4305, 74 U.S.L.W. 3669 (2006).

The trial court's decisions about admission or exclusion of evidence are reviewed for abuse of discretion. *Hammond v. United States*, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

A trial court's rulings as to relevance, as with other evidentiary rulings, are within the court's sound discretion and will be upset only upon a showing of grave abuse. *Rose v. United States*, 879 A.2d 986, 2005 D.C. App. LEXIS 408 (2005).

In determining whether the identification procedure was unnecessarily suggestive and conducive to irreparable misidentification, as element for reviewing an identification procedure, the Court of Appeals examines whether some related circumstances or something in the photographic array would have directed the witness' attention to any particular individual. *Rose v. United States*, 879 A.2d 986, 2005 D.C. App. LEXIS 408 (2005).

Whether to admit or exclude expert psychiatric testimony is a matter within the trial court's discretion, and a trial court's decision to exclude such evidence should be upheld unless manifestly erroneous. *Bennett v. United States*, 876 A.2d 623, 2005 D.C. App. LEXIS 266 (2005), writ of certiorari denied by 546 U.S. 1123, 126 S. Ct. 1134, 163 L. Ed. 2d 914, 2006 U.S. LEXIS 460 (2006).

Although the use of a single photograph for identification is highly suggestive, the appellate court will uphold the conviction if the identification was nonetheless reliable under all of the circumstances. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

The Court of Appeals reviews a trial court's determination to admit or deny the admission of prior recorded testimony for abuse of discretion, and also treat the determination as a factual finding to be reversed only if it is plainly wrong or without evidence to support it. *Mercer*

v. United States, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

The admissibility of a statement under excited utterance exception to hearsay rule is committed to the sound discretion of the trial court, and appellate court will reverse on appeal only if a ruling is clearly erroneous. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

A determination by the trial court that a statement is admissible as an excited utterance is left to its sound judgment. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

In ascertaining whether an incriminating statement is the result of a compelling police influence, the focus is primarily upon the perceptions of the suspect, rather than the intent of the police; to ward against unexpected perceptions, however, the Court of Appeals evaluates the normally foreseeable effect of the officer's remark or conduct, keeping in mind any peculiar susceptibilities of the suspect then known to the police. *Hill v. United States*, 858 A.2d 435, 2004 D.C. App. LEXIS 426 (2004).

To warrant admission of evidence of a crime for which defendant is not on trial, defendant's commission of other crime must be established preliminarily by clear and convincing evidence. *Anderson v. United States*, 857 A.2d 451, 2004 D.C. App. LEXIS 425 (2004).

While evidence of a crime for which the accused is not on trial is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged, other crimes evidence is admissible when it is relevant and important to the issue of intent, among other issues. *Anderson v. United States*, 857 A.2d 451, 2004 D.C. App. LEXIS 425 (2004).

Defendant's Sixth Amendment right to counsel was not violated by the admission of statements he made to government witness while the two were confined in a courthouse holding cell; government sought to ensure defendant's separation from government witness by requesting that the U.S. Marshal's service keep them apart at all times during the proceedings against defendant, defendant knew that witness was scheduled to testify against him but nevertheless initiated conversation with him in holding cells, and witness testified that defendant called out his name and asked witness "do anything to mess the trial up" so that there would be a mistrial. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

The evaluation and weighing of evidence for relevance and potential prejudice is quintes-

entially a discretionary function of the trial court, and the appellate court owes a great degree of deference to the trial court's decision. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

A decision on the admissibility of evidence is committed to the sound discretion of the trial court. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

Other crimes or bad acts evidence may be offered for the purpose of demonstrating "knowledge," and absent a finding that the prejudicial effect of the evidence substantially outweighs its probative value, evidence offered for such purpose will overcome the Drew presumption of inadmissibility of other crime or prior bad act evidence. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

Other crimes evidence is admissible if the evidence: (1) is direct and substantial proof of the charged crime; (2) is closely intertwined with the evidence of the charged crime; or (3) is necessary to place the charged crime in an understandable context. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

Courts presume prejudice from admission of other crimes evidence to prove predisposition to commit the charged crime, and exclude such evidence unless that evidence can be admitted for some substantial, legitimate purpose. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

If evidence of prior bad acts that are criminal in nature and independent of the crime charged is offered to prove predisposition to commit the charged crime, it is inadmissible. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

The trial court's decision to exclude testimony from defense expert witness concerning how children remember and relate events was not manifestly erroneous; trial court found that the testimony was not beyond the common experience of the average juror, and the extensive cross-examination of victim by defense counsel highlighted the inconsistencies in the victim's testimony. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

The Court of Appeals uses a three-part test to determine whether expert testimony is admissible: (1) the subject matter must be so distinc-

tively related to some science, profession, business or occupation as to be beyond the ken of the average layman, (2) the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth, and (3) expert testimony is inadmissible if the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

The Court of Appeals reviews the admission or exclusion of expert testimony for abuse of discretion. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

An evidentiary ruling by a trial judge on the relevancy of a particular item is a highly discretionary decision that will be upset on appeal only upon a showing of grave abuse. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

The evaluation and weighing of evidence for relevance and potential prejudice is quintessentially a discretionary function of the trial court, and an appellate court owes a great deal of deference to its decision. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

A decision on the admissibility of the evidence is committed to the sound discretion of the trial court and an appellate court will not disturb its ruling absent an abuse of discretion. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

A decision on the admissibility of evidence is committed to the sound discretion of the trial court, and appellate court will not disturb its ruling absent an abuse of discretion. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

Trial court took adequate measures to cure abuse that occurred in murder prosecution when four government witnesses blurted out inadmissible answers, where in two instances, court ordered the witnesses' answer stricken as unresponsive or contrary to a prior court ruling. *Woodall v. United States*, 842 A.2d 690, 2004 D.C. App. LEXIS 54 (2004), writ of certiorari denied by 543 U.S. 1155, 125 S. Ct. 1297, 161 L. Ed. 2d 120, 2005 U.S. LEXIS 1582, 73 U.S.L.W. 3495 (2005).

Results of a polygraph examination are not admissible to prove that a statement is true or false or that a witness is veracious or deceitful. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Trial court's analysis as to whether probative value of evidence is substantially outweighed by its prejudicial effect is quintessentially a discretionary function of the trial court, and Court of Appeals owe a great deal of deference to its decision. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Evaluating and weighing evidence for relevance in a criminal proceeding is within the trial court's discretion, and the Court of Appeals accord trial court's decision in that regard great deference. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

If the trial court has ruled on the substance of the objection in a criminal proceeding, the Court of Appeals will review the trial court's decision on admissibility of evidence for an abuse of discretion, even though it is not clear that the party objected contemporaneously. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Whether to allow or not to allow surrebuttal evidence is a matter committed to the discretion of the trial court, and its ruling either way will be reversed only for an abuse of discretion. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Whether a statement constitutes a spontaneous utterance in order to qualify under hearsay exception for excited utterances depends upon the particular facts of each case, and its admissibility as such is within the sound discretion of the trial court. *Jones v. United States*, 829 A.2d 464, 2003 D.C. App. LEXIS 472 (2003).

In order to qualify as an excited utterance for purposes of a hearsay exception, a statement must have been made: (1) in response to a startling event which causes the declarant to be in a state of nervous excitement or physical shock; (2) within a reasonably short period of time after the event to ensure that the declarant did not have time to reflect; and (3) under circumstances which, in their totality, indicate that the statement was spontaneous and sincere. *Jones v. United States*, 829 A.2d 464, 2003 D.C. App. LEXIS 472 (2003).

Once the proffered identification evidence clears the constitutional hurdle, it need only be in accord with the law of evidence to be sent to the jury. *Jones v. United States*, 829 A.2d 464, 2003 D.C. App. LEXIS 472 (2003).

Trial court's credibility determination in murder prosecution regarding contents of a conversation between defendant and his girlfriend, who was an attorney employed by federal government, and its factual finding that girlfriend was not acting as an attorney during that conversation would be upheld by appellate court in its review of attorney-client privilege claim unless those findings were plainly wrong or without evidence to support them. *Jones v. United States*, 828 A.2d 169, 2003 D.C. App. LEXIS 434 (2003), writ of certiorari denied by 540 U.S. 1166, 124 S. Ct. 1182, 157 L. Ed. 2d 1214, 2004 U.S. LEXIS 915, 72 U.S.L.W. 3487 (2004).

A trial court's findings of fact relevant to the essential elements of a claim of attorney-client privilege will not be overturned unless clearly erroneous. *Jones v. United States*, 828 A.2d 169, 2003 D.C. App. LEXIS 434 (2003), writ of certiorari denied by 540 U.S. 1166, 124 S. Ct. 1182, 157 L. Ed. 2d 1214, 2004 U.S. LEXIS 915, 72 U.S.L.W. 3487 (2004).

A trial court ruling that certain evidence is not relevant or probative is a highly discretionary decision which will be upset on appeal only upon a showing of grave abuse. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

For defendant to make argument that a third party committed the crime with which he was charged, evidence must establish proof of facts or circumstances which tend to indicate some reasonable possibility that a person other than the defendant committed the charged offense; the focus of the standard is not on the third party's guilt or innocence, but on the effect the evidence has upon the defendant's culpability, and in this regard it need only tend to create a reasonable doubt that the defendant committed the offense. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

In reviewing argument that third party committed crime with which defendant was charged, the trial court should exclude evidence that is too speculative with respect to third party's guilt. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

The trial court has wide latitude in the control of cross-examination where it did not keep from the jury relevant and important facts bearing on the trustworthiness of crucial information. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Although prior identifications are admissible under an exception to the hearsay rule, an account of the complaining witness' description of the offense itself is admissible under this exception only to the extent necessary to make the identification understandable to the jury. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

A witness' statements before a grand jury are admissible under the past recollection recorded exception to the hearsay rule if (1) the witness had first hand knowledge of the event, (2) the grand jury testimony was given at or near the time of the event while the witness had a clear and accurate memory of it, (3) the witness lacked a present recollection of the event, and (4) the witness vouches for the accuracy of the grand jury testimony. *Isler v. United States*, 824 A.2d 957, 2003 D.C. App. LEXIS 291 (2003).

Unless the witness has expressly repudiated recorded statement on the stand, the trial judge may consider all circumstances in finding the requisite confirmation necessary for admitting statement under recorded recollection exception to hearsay rule, including the demeanor of the witness in court. *Isler v. United States*, 824 A.2d 957, 2003 D.C. App. LEXIS 291 (2003).

Statements attributed to a victim seeking medical treatment relating to the psychological and emotional consequences of the abuse, as well as the physical injuries, may be admitted under the medical diagnosis and treatment exception to the hearsay rule. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Statements in a complainant's hospital records about the injured party's explanation of the cause of the injury fall within the medical diagnosis exception to the hearsay rule. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

The weighing of probative value versus prejudice must always be part of the trial judge's consideration, and the trial judge has the discretion to exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice; unfair prejudice within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Ordinarily, any evidence which is logically probative of some fact in issue is admissible and, if the evidence offered conduces in any reasonable degree to establish the probability or improbability of a fact in controversy, it should go to the jury. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

The doctrine of curative admissibility is limited and permitted, only to the extent necessary to remove any unfair prejudice which might otherwise have ensued from the original evidence. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

The doctrine of curative admissibility provides that in certain circumstances the prosecution may inquire into otherwise inadmissible evidence, but only after the defense has opened

the door with regard to this evidence. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

When part of a statement has been admitted in evidence, the "rule of completeness" allows a party to seek admission of other parts or the remainder as a matter of fairness; rule was designed to prevent parties from distorting the admitted portions by taking them out of context and, to that extent, misrepresenting the whole of a statement by only introducing part of it. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

In view of the concern, among others, that requiring a complete statement to be admitted into evidence after portions of statement have been entered will waste time and juror attention by focusing on portions of the statement having no bearing on the point at issue, the "rule of completeness," is not absolute. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

Implementation of the "rule of completeness," which allows admission of statement's remaining portions after parts of statement are admitted, is committed in the first instance to the discretion of the trial court and is reviewable only for abuse. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

Where the defense demonstrates that the admitted portions of statement are misleading because of a lack of context, it follows under the "rule of completeness" that the trial judge should permit such limited portions to be introduced as will remove the distortion that otherwise would accompany the prosecution's evidence. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

Under the Winfield standard for admission of evidence that someone other than the defendant perpetrated the charged crime, the defendant need not allege that other crimes are so similar to the matter at bar that they would be considered signature crimes; the test is whether the totality of the circumstances tends to show that another party might be culpable for the crime at bar. *Newman v. United States*, 810 A.2d 918, 2002 D.C. App. LEXIS 671 (2002), amended by 824 A.2d 40, 2003 D.C. App. LEXIS 468 (D.C. 2003).

The trial court's application of the legal standard of admissibility of evidence in support of its alternative holding that defendant's Winfield evidence, which suggested that someone other than the defendant perpetrated the charged crime, was inadmissible during murder trial warranted reversal of defendant's conviction; the trial court overstated the risk of jury confusion and failed to consider the possible prejudice to the defense and to defendant's constitutional rights. *Newman v. United States*, 810 A.2d 918, 2002 D.C. App. LEXIS 671 (2002), amended by 824 A.2d 40, 2003 D.C. App. LEXIS 468 (D.C. 2003).

Excluding witnesses from the courtroom during the presentation of testimony or precluding them from discussing their testimony with other witnesses prevents improper attempts to influence or tailor the testimony to that of the other witnesses. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Since the purpose of witness sequestration can be served by less severe remedies, violation of a sequestration order alone will not justify exclusion of the witness. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Generally, to justify the exclusion of a witness, the violation of court order for the sequestration of witnesses must be so egregious that it was somehow so discredited the witness as to render his testimony incredible as a matter of law. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

A decision on the admissibility of evidence is committed to the sound discretion of the trial court, and an appellate court will not disturb its ruling absent an abuse of discretion. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

If evidence of prior bad acts that are criminal in nature and independent of the crime charged is offered to prove predisposition to commit the charged crime, it is inadmissible. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Rule limiting admissibility of other crimes evidence does not apply where such evidence is (1) direct and substantial proof of the charged crime, (2) closely intertwined with the evidence of the charged crime, or (3) necessary to place the charged crime in an understandable context. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

The one requirement that applies to the admission of all evidence of other crimes is that relevance, or probative value, must be weighed against the danger of unfair prejudice. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

The balancing of the probative value and prejudice of other crimes evidence to determine its admissibility is committed to the discretion

of the trial judge, and an appellate court will review it only for abuse of such discretion. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Admission of other crimes evidence in prosecution for gun-related offenses, which consisted of videotape made prior to charged crimes that showed witness leaving defendant's home naked after defendant held a gun to her head, was admissible under the doctrine of curative admissibility, where witness had been impeached on cross-examination by testifying that she had had intercourse with defendant after such incident, and thus evidence corroborated witness's direct examination testimony that defendant did have a gun and that witness had such intercourse due to coercion. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Lay witness opinion testimony regarding the identity of a defendant in a surveillance photograph or a surveillance videotape is admissible into evidence, provided that such testimony is: (a) rationally based on the perception of a witness who is familiar with the defendant's appearance and has had substantial contact with the defendant; and (b) helpful to the factfinder in the determination of a fact in issue. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

In permitting lay witness opinion testimony regarding the identity of a defendant in a surveillance photograph or a surveillance videotape, trial court should be reasonably satisfied that because of the either obscured or altered appearance of the defendant in the photograph or the videotape, or changed appearance of the defendant, that the lay witness is more likely to accurately identify the defendant than is the factfinder. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Admissibility of lay witness opinion testimony regarding the identity of a defendant in a surveillance photograph or a surveillance videotape is subject to the sound discretion of the trial court. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Trial court, in prosecution for gun-related offenses, did not abuse its discretion by admitting opinions of lay witnesses who identified defendant and codefendant as the two individuals appearing in surveillance videotape of store that had been robbed and the photographs derived from the videotape; government properly laid the foundation showing that each of the lay witnesses' opinion was rationally related to the witness' own perceptions, government showed that such testimony would be helpful to the jury, and lay witnesses demonstrated particular familiarity with both individuals and had had substantial contact with

them. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Factors for determining whether a witness's reference to a polygraph test is so prejudicial as to result in the denial of a fair trial are: (1) whether reference was repeated or whether it was a single, isolated statement; (2) whether reference was solicited by counsel, or was an inadvertent and unresponsive statement; (3) whether witness making the reference is principal witness upon whom entire prosecution depends; (4) whether credibility is a crucial issue; (5) whether a great deal of other evidence exists; and (6) whether an inference as to result of test can be drawn. *Welch v. United States*, 807 A.2d 596, 2002 D.C. App. LEXIS 536 (2002), writ of certiorari denied by 537 U.S. 1132, 123 S. Ct. 914, 154 L. Ed. 2d 821, 2003 U.S. LEXIS 380, 71 U.S.L.W. 3473 (2003).

The Court of Appeals accords great deference to the trial judge's decision relating to the preliminary fact question of consciousness of impending death where reasonably supported by the evidence, but the perception of impending death must be exhibited in the evidence, and not left to conjecture. *Bell v. United States*, 801 A.2d 117, 2002 D.C. App. LEXIS 367 (2002), modified and rehearing denied by 817 A.2d 829, 2003 D.C. App. LEXIS 86 (D.C. 2003).

While the decision to admit or exclude testimony lies within the discretion of the trial judge, the exercise of that discretion must be founded upon correct legal principles; it is an abuse of discretion if the trial judge rests her conclusions on incorrect legal standards. *Bell v. United States*, 801 A.2d 117, 2002 D.C. App. LEXIS 367 (2002), modified and rehearing denied by 817 A.2d 829, 2003 D.C. App. LEXIS 86 (D.C. 2003).

The decision to admit expert evidence is vested in the discretion of the trial court, and its ruling will be upheld unless manifestly erroneous. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Grand jury testimony of government's eyewitness in murder case, showing that she lied either to the police or the grand jury with respect to another murder that she allegedly observed, would not be cumulative if defendant were allowed to use it for impeachment purposes, even though eyewitness was otherwise impeached with prior convictions and evidence of drug-related activities. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

The appellate court reviews a trial court's decision to allow opinion testimony under an abuse of discretion standard. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Trial court acted within its discretion in admitting caller's audiotaped 911 emergency telephone call under exception to hearsay rule for

excited utterances, despite caller's subsequent equivocation as to whether she heard and saw attack of victim, in light of tone of caller's voice, promptness and detail of report, and physical evidence consistent with caller's account. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

To qualify as an excited utterance, an exception to hearsay, a statement must have been made: (1) in response to a startling event which causes the declarant to be in a state of nervous excitement or physical shock, (2) within a reasonably short period of time after the event to ensure that the declarant did not have time to reflect, and (3) under circumstances which, in their totality, indicate that the statement was spontaneous and sincere. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

False exculpatory statements may give rise to an inference of consciousness of guilt, from which guilt itself may be inferred. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

For defendant to make the argument that a specific named third person committed the crime with which he was charged, the evidence must establish proof of facts or circumstances which tend to indicate some reasonable possibility that a person other than defendant committed the charged offense; despite this minimal inclusive relevance standard, the trial court should still exclude evidence that is too speculative with respect to the third party's guilt. *Hager v. United States*, 791 A.2d 911, 2002 D.C. App. LEXIS 40 (2002), writ of certiorari denied by 543 U.S. 846, 125 S. Ct. 290, 160 L. Ed. 2d 74, 2004 U.S. LEXIS 6032, 73 U.S.L.W. 3208 (2004).

Trial judge must balance the probative value of the evidence against the risk of prejudicial impact, including the risk of jury confusion from a trial-within-a-trial, and may exclude marginally relevant evidence if it will distract the jury from the issue in this case. *Hager v. United States*, 791 A.2d 911, 2002 D.C. App. LEXIS 40 (2002), writ of certiorari denied by 543 U.S. 846, 125 S. Ct. 290, 160 L. Ed. 2d 74, 2004 U.S. LEXIS 6032, 73 U.S.L.W. 3208 (2004).

The trial court's decisions about admission or exclusion of evidence are reviewed for abuse of discretion. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Whether an opinion is helpful to the jury and hence admissible is a question entrusted to the sound discretion of the trial court, and its admission of such testimony will not be overturned unless it constitutes a clear abuse of

discretion. *Keels v. United States*, 785 A.2d 672, 2001 D.C. App. LEXIS 243 (2001).

The Court of Appeals reviews a trial court's decision regarding the admissibility of evidence for abuse of discretion. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Error in admitting witness's testimony that she was reluctant to testify and had changed her testimony in murder and drug prosecution because she was fearful of defendants, in conjunction with prosecutor's unsupported suggestions to jury that another witness was similarly fearful, and that murder defendant had confessed to the murder by offering a premature alibi to the police, was unduly prejudicial. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Issue of whether evidentiary hearing was necessary to determine admissibility of evidence, or whether trial court could properly consider this issue by means of proffer, was reviewable for abuse of discretion. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Fact that "other crimes" evidence in form of testimony that defendant had set fires before in his father's house was elicited on cross-examination by defense counsel did not preclude defendant from arguing that such testimony should be basis for reversal of his conviction for felony malicious destruction of property, alleging that defendant again set that house on fire; initial question that elicited response was designed to delve into witness's possible bias, it required simple yes or no response and did not invite inflammatory remark given, and even though defense counsel repeated witness's statement when questioning resumed, counsel had right to attempt to rehabilitate defendant by showing witness's bias, in light of trial court's ruling that it would not give instruction or declare mistrial at that time. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Appellate court would review trial court's ruling allowing admission, in armed robbery trial, of defendant's attempted flight from preliminary hearing under abuse of discretion standard. *Smith v. United States*, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Juvenile courts are not categorically prohibited from admitting victim impact statements at juvenile disposition hearings based on potential for misusing them as evidence signifying need for retribution; rather, juvenile court judges are trusted to recognize the limited relevance of the statements to rehabilitation and to exercise caution in admitting them. In re *M.N.T.*, 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

Admission of lay opinion of detective who conducted post-crime interview with victim,

that victim did not appear to be intoxicated at hospital during the interview, was not plain error in prosecution for assault with dangerous weapon; the testimony enabled the jury to determine for itself victim's level of impairment. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Any error in burglary prosecution in allowing government to admit allegedly irrelevant evidence of defendant's home address was not sufficiently prejudicial to overcome strong eyewitness evidence of defendant's actions inside garage where offense occurred. *McFerguson v. United States*, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub nomine *Worthington v. United States*, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

Any error in admission, in rape prosecution, of testimony of DNA expert to effect that standard methodologies used to test crime scene samples and blood samples had particular probabilities of coincidental match, but that in defendant's particular case he believed those numbers to be overly conservative due to defendant's unusual genetic profile, did not amount to miscarriage of justice and did not warrant mistrial, where state's other evidence was overwhelming. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

Trial court's decision to admit relevant evidence over a stipulation should not be disturbed absent a showing of grave abuse. *Edwards v. United States*, 767 A.2d 241, 2001 D.C. App. LEXIS 45 (2001).

Decision whether to admit or exclude expert psychiatric testimony is confided to the trial court's sound discretion. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

Decision whether to admit evidence is within sound discretion of trial court, and this decision will not be disturbed absent a showing of abuse. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

— Confessions.

Ordinarily, a witness whose testimony is introduced at a joint trial is not considered to be a witness against a defendant if the jury is

instructed to consider that testimony only against a co-defendant. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

Where references to one defendant in a co-defendant's statement are removed or replaced, admission of the redacted statement will not violate the confrontation clause if, when viewed together with other evidence, the statement does not create an inevitable association with the defendant, and a proper limiting instruction is given. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

Defendant's trial should not have been severed from that of co-defendant on ground that jury heard the contents of co-defendant's confession, which implicated defendant; two crucial measures undertaken by trial judge compensated for any possible prejudice which might have emanated from co-defendant's confession, namely the confession was redacted to eliminate any reference to defendant and judge instructed the jury several times that co-defendant's confession could be used only against co-defendant. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

The standard for determining whether admission of illegally obtained confession is harmless error is whether overwhelming evidence exists to support the conviction, independent of the tainted confession. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

Although prosecutor referred to the contents of the improperly obtained confession during the opening and closing arguments—and especially in the rebuttal argument—this alone did not necessarily make government's use of the confession reversible constitutional error. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

Trial court's error in admitting illegally obtained confession was harmless; the available evidence, independent of the tainted confession, directly identified defendant as the shooter, and although defendant admitted shooting at the car in his videotaped confession, that information was entirely cumulative of the testimony of witnesses. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

Trial court's error in admitting illegally obtained confession was not harmless because the confession, while partially cumulative of other testimony, presented the jury with two significant pieces of evidence, namely that defendant was involved in the planning of the shooting and that he instructed co-defendant to "get at them," and this testimony was not found anywhere else in the government's case against defendant; defendant's confession provided the jury with the most incriminating evidence against him, which appeared nowhere else in

the record. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

If the content of the improperly admitted confession is replicated in toto by other evidence, then the error is harmless. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

— False or misleading evidence.

It is impermissible for the government to manufacture evidence by creating an impression in the minds of the jurors through questions that imply the existence of facts, unless the factual predicate for the question is grounded in a good faith belief that those facts are susceptible to proof by competent evidence. *Plummer v. United States*, 813 A.2d 182, 2002 D.C. App. LEXIS 733 (2002).

Prejudice to government in allowing defendant to play last few minutes of video tape of police interrogation so that jury in murder trial could see that defendant began to cry outweighed probative value towards challenging testimony that entire interrogation was conducted in nonthreatening manner; mere threat that defendant became distraught did not show that interrogation had become coercive or minatory. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

A defendant is entitled to a new trial if there is any reasonable likelihood jury's judgment could have been affected by false testimony that was knowingly presented by a prosecutor or that was permitted into evidence by the prosecutor without correction. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

Conviction obtained through use of false evidence that is known to be false by prosecutor denies defendant liberty without due process of law. U.S. Const. Amends. 5, 14. *Bruce v. United States*, 617 A.2d 986, 1992 D.C. App. LEXIS 315 (1992), writ of certiorari denied by 507 U.S. 1042, 113 S. Ct. 1878, 123 L. Ed. 2d 496, 1993 U.S. LEXIS 2967, 61 U.S.L.W. 3715 (1993).

Defendant's due process rights were not violated by failure of state or trial judge to intervene after state's witness testified that defendant fired gun at police officer even though state and trial judge knew that government tests had established that gun had not been fired, where defense counsel also knew of results of tests on gun; defense counsel could be left to propose way to protect interests of his client and try his own case. U.S. Const. Amends. 5, 14. *Bruce v. United States*, 617 A.2d 986, 1992 D.C. App. LEXIS 315 (1992), writ of certiorari denied by 507 U.S. 1042, 113 S. Ct. 1878, 123 L. Ed. 2d 496, 1993 U.S. LEXIS 2967, 61 U.S.L.W. 3715 (1993).

Prosecutor's permitting officer to present testimony before grand jury that paraffin test for powder on defendant's hand had been positive when, in fact, no paraffin test had been conducted and prosecutor's own notes indicated that "nitro swabs" had been taken from defendant's hand was gross negligence and could not be condoned, but did not require reversal of conviction; given other incriminating evidence before grand jury, truthful answer would not have substantially influenced grand jury's decision to indict. *Sanders v. United States*, 550 A.2d 343, 1988 D.C. App. LEXIS 205 (1988).

— Identification procedures, evidence.

In evaluating eyewitness identification testimony, the Court of Appeals looks to such factors as the ability of the witness to make a meaningful identification, i.e., the witness's opportunity to observe and the length of time of the observations, the lighting conditions, the length of time between the observations and the identification, the stimuli operating on the witness at the time of the observation, as well as the degree of certainty expressed by the witness in making the identification. *Adams v. United States*, 883 A.2d 76, 2005 D.C. App. LEXIS 469 (2005).

Although the Court of Appeals generally reviews the suggestiveness of an identification procedure under a two-part inquiry to determine, first, whether the procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification and, second, whether the identification is nonetheless sufficiently reliable, it does not apply this test in a situation where there is no possibility of police suggestion or witness misidentification. *Adams v. United States*, 883 A.2d 76, 2005 D.C. App. LEXIS 469 (2005).

— In general.

Section of District of Columbia Code establishing procedure for collateral review of convictions provided forum for "stand-alone" claims of actual innocence based on newly discovered evidence, and thus that procedure was adequate to test legality of defendant's detention; consequently, defendant was not authorized to petition federal court for habeas relief on basis that relief under Innocence Protection Act (IPA) was his exclusive remedy and outside of collateral review procedure. *Ibrahim v. United States*, 661 F.3d 1141, 2011 U.S. App. LEXIS 23735 (C.A.D.C. 2011).

Defendant was not prejudiced when State violated its representation to defendant's counsel in pretrial discovery that it would not present evidence of any uncharged crimes when officer testified on direct examination to having seen defendant make other drug sales, and as such, State's violation of its representation to defendant did not constitute reversible error;

the trial judge undertook to enforce the expectation generated by the government's pretrial representation, and judge did so by striking the evidence and instructing jury to disregard it, and the uncharged crimes evidence was superfluous with respect to the charges of which the jury convicted defendant. *Simmons v. United States*, 940 A.2d 1014, 2008 D.C. App. LEXIS 14 (2008).

Under Carter procedure for evaluating a defense witness's request for immunity, the defendant must show that the proposed testimony is material, clearly exculpatory, non-cumulative, and unobtainable from any other source; once these factors have been established and the court has concluded preliminarily that the process should continue, the next step might be to institute a debriefing process of the proposed defense witness by the prosecution in order to determine whether the government will accede to a grant of use immunity to the witness, and if, after the debriefing process, the government decides not to grant immunity, the court must explore the basis of the government's refusal and decide whether there will be a distortion of the fact-finding process and the indictment should therefore be dismissed for a denial of due process and Sixth Amendment rights to the defendant, or some other commensurate remedy, unless the government agrees to grant use immunity to the crucial witness. *Butler v. United States*, 890 A.2d 181, 2006 D.C. App. LEXIS 2 (2006).

In determining whether the trial court has abused its discretion in making an evidentiary ruling, the appellate court considers whether the exercise of discretion was in error and, if so, whether the impact of that error requires reversal. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

Appellate court reviews a trial court's evidentiary rulings for an abuse of discretion. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

Delineating the proper scope of redirect examination rests within the sound discretion of a trial court and will not be reversed absent a clear showing of abuse. *Rose v. United States*, 879 A.2d 986, 2005 D.C. App. LEXIS 408 (2005).

In determining whether an identification was sufficiently reliable, the Court of Appeals looks to the following factors: (1) opportunity of witness to view criminal at time of crime; (2) witnesses' degree of attention; (3) accuracy of witness' prior description of criminal; (4) level of certainty demonstrated at confrontation; and

(5) time between crime and confrontation. *Rose v. United States*, 879 A.2d 986, 2005 D.C. App. LEXIS 408 (2005).

An appellate court reviews a trial court's rulings placing limitations on cross-examination for an abuse of discretion. *Bennett v. United States*, 876 A.2d 623, 2005 D.C. App. LEXIS 266 (2005), writ of certiorari denied by 546 U.S. 1123, 126 S. Ct. 1134, 163 L. Ed. 2d 914, 2006 U.S. LEXIS 460 (2006).

Credibility of a witness is determined by the trier of fact, and an appellate court must defer to its credibility findings if they are supported by the evidence. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

Once sufficient cross-examination of opposing witnesses has occurred to satisfy the Sixth Amendment, the trial judge may curtail cross-examination because of concerns of harassment, prejudice, confusion of the issues, the safety of the witness, or interrogation that is repetitive or only marginally relevant, without violating a defendant's rights under the Confrontation Clause. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

In reviewing claims of error based on a trial court's restriction of cross-examination by a defendant, the standard of review depends upon the scope of cross-examination permitted by the trial court measured against an assessment of the appropriate degree of cross-examination necessitated by the subject matter. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

Once a trial judge has allowed enough cross-examination on an appropriate issue to satisfy the Sixth Amendment, limitation on further cross-examination will be reviewed for an abuse of discretion. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

In reviewing a claim of error based on a trial court's restriction of cross-examination by a defendant, Court of Appeals will examine the record to determine whether the trial court committed an error of constitutional dimension; if so, Court of Appeals decides whether the error is harmless beyond a reasonable doubt. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

Whether a violation of a defendant's right under the Confrontation Clause to cross-examine a witness as to bias is harmless depends on many factors, including the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

In determining whether a violation of a defendant's right under the Confrontation Clause to cross-examine a witness as to bias was harmless, Court of Appeals asks whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

To show harmlessness beyond a reasonable doubt of a violation of a defendant's right under the Confrontation Clause to cross-examine a witness as to bias, the government must show that (1) defendant would have been convicted without the witness's testimony, or (2) the restricted line of questioning would not have weakened the impact of the witness's testimony. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

Trial court's violation of defendant's rights under Confrontation Clause by precluding cross-examination of police detective's alleged failures to comply with department policy on identifications and to include possible exculpatory information in warrant affidavits was harmless beyond reasonable doubt; central witnesses were victims, identifications of defendant by victims were fully explored before jury, detective's testimony as to identification was cumulative, and jury had opportunity to assess detective's credibility through other questioning and was aware of defendant's challenge to integrity of investigation. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

The Court of Appeals defers to the factfinder to determine credibility, weigh the evidence, and draw reasonable inferences. *Vaas v. United States*, 852 A.2d 44, 2004 D.C. App. LEXIS 295 (2004).

When Court of Appeals undertakes to assess true import of questionable rebuttal evidence, Court owes considerable deference to superior vantage point of judge who oversaw trial; hence, Court is disinclined to overturn a trial judge who has determined, after watching a case unfold, that testimony properly rebuts an inference that a party's adversary has sought to make. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Court of Appeals will reverse trial judge's decision to allow rebuttal evidence only for abuse of discretion. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Determining whether a statement falls within an exception to the hearsay rule presents a question of law, which the appellate court considers de novo. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Evidentiary rulings by a trial court are reviewed for abuse of discretion and will be re-

versed only if the trial court's exercise of discretion is clearly erroneous. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

A trial court ruling that certain evidence is not relevant or probative is a highly discretionary decision which will be upset on appeal only upon a showing of grave abuse. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Relevant evidence is that which tends to make the existence or nonexistence of a fact more or less probable than would be the case without that evidence. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

The Court of Appeals reviews a trial court's evidentiary rulings for abuse of discretion and will reverse only if the exercise of discretion is clearly erroneous. *Isler v. United States*, 824 A.2d 957, 2003 D.C. App. LEXIS 291 (2003).

The requirement that an examiner has a good faith belief that circumstances indicate bias to allow examiner to cross-examine for bias is both flexible and lenient; however, a proper foundation must include a proffer of some facts supporting a genuine belief that the witness is biased in the manner asserted, and sufficient facts to permit the trial judge to evaluate whether the proposed question is probative of bias. *Joyner v. United States*, 818 A.2d 166, 2003 D.C. App. LEXIS 133 (2003), writ of certiorari denied by 541 U.S. 1005, 124 S. Ct. 2058, 158 L. Ed. 2d 521, 2004 U.S. LEXIS 3000, 72 U.S.L.W. 3658 (2004).

The party objecting to evidence must make known to the court and opposing party the specific portion of the testimony that is objectionable and the precise ground on which the party is basing his objection. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

A criminal defendant would succeed on a Sixth Amendment challenge based on the right of confrontation by demonstrating that he was prohibited from engaging in otherwise appropriate cross-examination designed to show bias, provided the government is unable to show harmless error beyond a reasonable doubt. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

It is the province of the trier of fact to determine the credibility of the witnesses and to make reasonable inferences from the evidence presented. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

A criminal defendant's right to cross-examine prosecution witnesses is protected by the confrontation clause of the Sixth Amendment; that right, however, is not unlimited. *Coles v. United States*, 808 A.2d 485, 2002 D.C. App. LEXIS 556 (2002), writ of certiorari denied by 540 U.S. 931, 124 S. Ct. 346, 157 L. Ed. 2d 237, 2003 U.S. LEXIS 7207, 72 U.S.L.W. 3245 (2003).

Defendant was not entitled, in prosecution for assault by three assailants, to recross-examine crime scene search officer regarding why fingerprints could not be recovered from two pieces of broken wooden rod found at assault scene, after officer had said on cross-examination that he had not tried to recover fingerprints from the wood and prosecutor had asked officer on redirect examination why officer had not tried to recover fingerprints from the wood; defense counsel had already raised during cross-examination the issue of why fingerprints could not be recovered, albeit with less-detailed exploration than the redirect examination, the cross-examination had already communicated to jury that no incriminating fingerprints were found on the wood, and any further exploration of why fingerprints could not be recovered would not have exculpated defendant. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Defendant failed to lay a proper foundation for cross-examination of government witness on whether she had been treated for substance abuse, and thus defendant was not entitled to question witness on the matter, where, upon trial court's sustaining of government's objection, defendant failed to explain the relevance or probative value of the question and its anticipated answer. *Williams v. United States*, 805 A.2d 919, 2002 D.C. App. LEXIS 489 (2002).

The right to cross-examine a witness is a fundamental right under the Confrontation Clause; nevertheless, regulation of the extent and scope of cross-examination lies with the discretion of a trial judge. *Williams v. United States*, 805 A.2d 919, 2002 D.C. App. LEXIS 489 (2002).

A trial court may always limit cross-examination to prevent inquiry into matters having little relevance or probative value to the issues raised at trial without committing error. *Williams v. United States*, 805 A.2d 919, 2002 D.C. App. LEXIS 489 (2002).

Right to cross-examination is not an unfettered right to conduct the examination in any manner; rather, consistent with the Confrontation Clause, a trial judge may place reasonable limitations on cross-examination so as to avoid harassment, prejudice, confusion of the issues, or interrogation that is only marginally relevant. *Velasquez v. United States*, 801 A.2d 72, 2002 D.C. App. LEXIS 314 (2002), US Supreme Court certiorari denied by 537 U.S. 963, 123 S.

Ct. 396, 154 L. Ed. 2d 319, 2002 U.S. LEXIS 7514, 71 U.S.L.W. 3265 (2002).

After sufficient cross-examination has been allowed to satisfy requirements of Confrontation Clause, the trial court retains broad discretion to determine the scope and extent of cross-examination. *Velasquez v. United States*, 801 A.2d 72, 2002 D.C. App. LEXIS 314 (2002), US Supreme Court certiorari denied by 537 U.S. 963, 123 S. Ct. 396, 154 L. Ed. 2d 319, 2002 U.S. LEXIS 7514, 71 U.S.L.W. 3265 (2002).

Although the opportunity to cross-examine a witness is a fundamental right, which is guaranteed in a criminal trial through the confrontation clause of the Sixth Amendment, the extent and scope of cross-examination is committed to the sound discretion of the trial court. *Mindombe v. United States*, 795 A.2d 39, 2002 D.C. App. LEXIS 71 (2002), writ of certiorari denied by 537 U.S. 1234, 123 S. Ct. 1355, 155 L. Ed. 2d 200, 2003 U.S. LEXIS 1790, 71 U.S.L.W. 3566 (2003).

Once a party has had an opportunity substantially to exercise the right of cross-examination, the extent of further interrogation is within the sound discretion of the trial court and reversal by an appeals court is warranted only where an abuse of discretion leads to prejudice. *Mindombe v. United States*, 795 A.2d 39, 2002 D.C. App. LEXIS 71 (2002), writ of certiorari denied by 537 U.S. 1234, 123 S. Ct. 1355, 155 L. Ed. 2d 200, 2003 U.S. LEXIS 1790, 71 U.S.L.W. 3566 (2003).

Decision to exclude evidence is a matter for the trial court's discretion. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Appellate court recognizes the jury's right to assess credibility and to draw reasonable inferences from the evidence it has heard. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

Decision to admit or exclude photographs as demonstrative evidence is within trial court's sound discretion. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

Under harmless error test, it must be clear beyond a reasonable doubt (1) that defendant would have been convicted without the witness' testimony, or (2) that the restricted line of inquiry would not have weakened the impact of the witness' testimony. *McCloud v. United States*, 781 A.2d 744, 2001 D.C. App. LEXIS 206 (2001).

Not every admission of inadmissible hearsay or other evidence can be considered to be reversible error unavoidable through limiting instructions. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

Failure to give immediate corrective instruction upon erroneous admission of "other crimes" evidence in form of testimony that defendant had set fires before in his father's house could not be deemed harmless in prosecution for felony malicious destruction of property, alleging that defendant again set that house on fire; case against defendant was circumstantial, and defense expert testified at length about inadequacies of government investigation and proof to establish that fire was intentionally set or to have originated as government claimed. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

If the trial court has completely denied the defendant an opportunity to cross-examine a witness, the Court of Appeals will affirm the conviction only if it can find the error harmless beyond a reasonable doubt. *Villa v. District of Columbia*, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

Under *Kotteakos*, which is applied to those instances in which the defendant was not wholly deprived of an opportunity to cross-examine a witness, the test for harmless error is whether a reviewing court can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Villa v. District of Columbia*, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

In reviewing whether a trial court abused its discretion in restricting the cross-examination of a witness to impeach his general credibility with a prior juvenile adjudication, the appellate court must determine whether a reasonable jury could have arrived at a different outcome, not what the trial court itself would have concluded as trier. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

Whether to allow recross-examination is left to the trial court's broad discretion; consequently, a decision either to allow or to prohibit recross-examination is reviewed only for abuse of discretion. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Trial court's determination of whether to admit third-party culpability evidence should not be disturbed absent a showing of abuse of discretion. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Evidence that tends to show bias, even if extrinsic to issues raised on direct examination,

should be admitted on cross-examination. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Evidence that testimony of Government's key eyewitness to fatal shooting might have been motivated by his effort to cover up his own involvement in shooting, and perhaps to downplay culpability of his partner in criminal activity, was highly relevant to jury's assessment of witness's credibility, and should have been admitted on cross-examination as third-party culpability evidence. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Improper exclusion of third-party culpability evidence on cross-examination reaches constitutional proportions if trial court has failed to permit sufficient cross-examination to comport with requirements of Sixth Amendment. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Where trial court's evidentiary ruling wholly deprives defendant of any opportunity to cross-examine witness or present evidence concerning bias or a central issue in case, Court of Appeals may only affirm if Court is convinced that the error was harmless beyond a reasonable doubt. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Under harmless error test for improper evidentiary ruling, it must be clear beyond a reasonable doubt (1) that defendant would have been convicted without witness's testimony, or (2) that the restricted line of inquiry would not have weakened impact of witness' testimony. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Improper exclusion of third-party culpability evidence on cross-examination was harmless error, where, in spite of ruling, defendants were able to present their theory that Government's key eyewitness, who committed another murder, also participated in murder at issue, and defendants were able to elicit evidence, and to argue, that eyewitness was himself a willing participant in murder at issue, had a motive and opportunity to commit it, was biased to protect his own interests and thus, sought to shift blame to others. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Any error in admitting statements that codefendant made to Government witnesses under co-conspirator hearsay exception in joint trial was harmless, where Government's other proof was compelling and did not depend upon objectionable statements. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

In reviewing admission of evidence for abuse of discretion, Court of Appeals must inquire not only whether judge erred in ruling but also whether error was of magnitude requiring re-

versal. *Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Assuming that testimony would conform defendant's evidence proffered under reverse Drew/Winfield theory to show that someone other than defendant committed recent robbery that was similar to charged robbery, exclusion of such evidence was not harmless beyond a reasonable doubt; although witnesses identified defendant as being involved in charged robbery, there was testimony that both were smoking crack cocaine at the time, and both failed to identify defendant until after his picture appeared in newspaper. *U.S. Const. Amend. 6. Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Constitutional harmless error standard applied to rejection of extrinsic evidence proffered by defendant under reverse Drew/Winfield theory; evidence, which was proffered for purposes of impeaching key government witness for bias and showing reasonable possibility that someone other than defendant committed crime, implicated defendant's right of confrontation and right to present a defense. *U.S. Const. Amend. 6. Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Failure to admit reverse Drew/Winfield evidence that someone other than defendant committed recent, similar crime will be subject to constitutional harmless error analysis if the evidence goes to the heart of the defense theory. *Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Exclusion of evidence of bias of government witness whose credibility is central issue in case must be examined for constitutional error. *Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Court of Appeals' review of trial court's determination of relevance is highly deferential, and it will be disturbed only upon showing of abuse of discretion. *Bowman v. United States*, 652 A.2d 64, 1994 D.C. App. LEXIS 250 (1994).

Denial of a request to introduce additional portions of a statement under the rule of completeness should be reversed only if the trial court has abused its discretion. *Butler v. United States*, 614 A.2d 875, 1992 D.C. App. LEXIS 188 (1992), writ of certiorari denied by 506 U.S. 1009, 113 S. Ct. 625, 121 L. Ed. 2d 558, 1992 U.S. LEXIS 7611, 61 U.S.L.W. 3401 (1992).

— Loss or destruction of evidence.

Where defense counsel requests the imposition of specific sanctions for breach of the preservation of evidence rule, the decision as to what sanctions should be imposed or whether to impose any sanctions at all are matters committed to the trial court's discretion. *Williams v. United States*, 805 A.2d 919, 2002 D.C. App. LEXIS 489 (2002).

Defendant's due process right to fair trial was not violated by loss of photo array and other exhibits stored at back of courtroom during overnight period following first day of jury deliberations; loss was not in bad faith and not prosecution's fault, array was not exculpatory or key piece of evidence, array was not component of defendant's defense, defendant never challenged array on grounds that array was suggestive, and it was not reasonably possible that jury would have reached different verdict had array and other evidence not been lost, given victim's in-court identification and corroborating evidence. *U.S. Const. Amend. 6. Fields v. United States*, 698 A.2d 485, 1997 D.C. App. LEXIS 194 (1997), writ of certiorari denied by 523 U.S. 1012, 118 S. Ct. 1203, 140 L. Ed. 2d 331, 1998 U.S. LEXIS 1768, 66 U.S.L.W. 3592 (1998).

— Newly discovered evidence.

Even if victim's letter to trial court constituted a recantation and her recantation was credited, defendant, who had been convicted of assault with intent to commit first-degree sexual abuse (AWICSA), failed to show that a manifest injustice occurred, as necessary to warrant vacation of his sentence, or that he was actually innocent, as necessary to warrant relief under Innocence Protection Act (IPA); evidentiary value of victim's purported recantation was low, and would have, at best, been used to impeach her initial account of the events that a rape or attempted rape had occurred, defendant did not dispute that he seriously assaulted victim with a knife, nor could he, given the extent of her wounds as reflected in the medical records, victim's initial account of what happened continued to carry weight, especially in light of its consistency with the other evidence, and a paramedic recalled that while victim was receiving treatment, she reported having been raped. *Meade v. United States*, 48 A.3d 761, 2012 D.C. App. LEXIS 322 (2012).

Even if defendant's motion for new trial based on alleged newly discovered evidence was not jurisdictionally barred, defendant's delay of more than 13 years in filing motion made vital parts of the record unavailable and made it impossible for the government to retry the case, and thus, defendant was not entitled to a new trial. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

To succeed on a motion for new trial based upon a claim of newly discovered evidence, the movant must show that: (1) the evidence is newly discovered; (2) the moving party was diligent in seeking to obtain the evidence; (3) the evidence is material to the issues involved and not merely cumulative or impeaching; and (4) it is of a nature that it would probably produce an acquittal. *Porter v. United States*,

826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Each case in which a defendant moves for new trial on grounds of newly discovered evidence consisting of a previously silent co-defendant's testimony attempting to assume the entire blame must be judged on its own particular facts. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Evidence known to the defendant during trial cannot be considered "newly discovered" for purposes of a motion for new trial. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Trial court erred in denying defendant's motion for new trial, following convictions for kidnapping while armed, armed robbery, assault with intent to commit rape while armed, and possession of firearm during crime of violence, which motion was based on newly discovered evidence consisting of handwritten affidavit from alleged participant in crimes, who stated that defendant did not participate, where government conceded its one ground for opposing motion, that is, untimeliness, and trial court's remaining reasons for denying motion without evidentiary hearing were not asserted by government in trial court and were unpersuasive. *Arrington v. United States*, 804 A.2d 1068, 2002 D.C. App. LEXIS 483 (2002).

Defendant was not entitled to a new trial for aggravated assault based on newly discovered evidence; the alleged new evidence was an affidavit which stated that defendant did not serve a jail sentence for his previous assault conviction, the evidence had been readily available to defendant prior to or during trial, and defendant was aware that the State planned to use defendant's assault conviction as a "link" to his murder conviction for impeachment purposes. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

To meet the requirements for a new trial based on newly discovered evidence (1) the evidence must have been discovered since the trial; (2) the party seeking the new trial must show diligence in the attempt to procure the newly discovered evidence; (3) the evidence relied on must not be merely cumulative or impeaching; (4) it must be material to the issues involved; and (5) of such nature that in a new trial it would probably produce an acquittal. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

The judge who presided over the trial and had the opportunity to develop a "feel" for the case is in a superior position to that of an appellate court, with respect to a motion for new trial, to discern whether newly discovered evidence has any appreciable potential for affecting the jury's verdict. *Whitley v. United States*, 783 A.2d 629, 2001 D.C. App. LEXIS

227 (2001), modified by 796 A.2d 26, 2002 D.C. App. LEXIS 77 (D.C. 2002).

For a new trial motion based on newly discovered evidence to succeed: (1) the evidence must be newly discovered; (2) the moving party must show diligence in efforts to procure the new evidence; (3) the material must not be merely cumulative or impeaching; (4) it must be material to the issues involved; and (5) of such a nature that an acquittal would likely result from its use. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

The prerequisites for granting a new trial based on newly discovered evidence are that: (1) the evidence must be newly discovered; (2) the moving party must show diligence in efforts to procure the new evidence; (3) the material must not be merely cumulative or impeaching; (4) it must be material to the issues involved; and (5) of such a nature that an acquittal would likely result from its use. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

The decision to deny a motion for a new trial that is based on newly discovered evidence is within the trial court's discretion, and the Court of Appeals reviews for abuse of that discretion. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

To obtain new trial because of newly discovered evidence (1) evidence must have been discovered since the trial; (2) party seeking new trial must show diligence in attempt to procure newly discovered evidence; (3) evidence relied on must not be merely cumulative or impeaching; (4) it must be material to issues involved; and (5) of such nature that in a new trial it would probably produce an acquittal. Criminal Rule 33. *Prophet v. United States*, 707 A.2d 775, 1998 D.C. App. LEXIS 34 (1998).

Statement by codefendant who chose to remain silent during earlier trial, which might arguably be regarded as newly discovered evidence, warranted close scrutiny, because such codefendant, after conviction, had little to fear in attempting to exculpate others involved in the offense by assuming entire blame. *Prophet v. United States*, 707 A.2d 775, 1998 D.C. App. LEXIS 34 (1998).

Affidavit from codefendant, exonerating defendant of responsibility for felony murder, was not sort of newly discovered evidence that would probably produce an acquittal at new trial on felony murder charge; codefendant was not credible witness, and his statement did not directly contradict witness' testimony that defendant told codefendant he wanted boombox, which codefendant procured by shooting its owner. Criminal Rule 33. *Prophet v. United*

States, 707 A.2d 775, 1998 D.C. App. LEXIS 34 (1998).

Affidavit from codefendant, exonerating defendant of responsibility for felony murder, was not merely impeaching evidence, but was substantive evidence that warranted consideration as newly discovered evidence on motion for new trial. Criminal Rule 33. *Prophet v. United States*, 707 A.2d 775, 1998 D.C. App. LEXIS 34 (1998).

Finding on defendant's motion for new trial that newly discovered evidence that prosecution's witness had perjured herself at defendant's trial was inherently incredible was not clearly erroneous. Criminal Rule 33; D.C. Code 1981, § 23-110. *Young v. United States*, 639 A.2d 92, 1994 D.C. App. LEXIS 26 (1994).

Motion judge's denial of defendant's motion for new trial on basis that exculpatory statements constituted newly discovered evidence requiring new murder trial was not an abuse of discretion; one statement was not newly discovered, since defendant admitted at motions hearing that he had known before trial that witness would exculpate him, and second vague and double hearsay statement did not constitute newly discovered evidence likely to affect verdict. *Matthews v. United States*, 629 A.2d 1185, 1993 D.C. App. LEXIS 179 (1993).

Testimony of witnesses "discovered" either at end of trial or after trial did not constitute newly discovered evidence that warranted new trial inasmuch as it was either cumulative of testimony already given or could not in fact exonerate defendant. *Joseph v. United States*, 597 A.2d 14, 1991 D.C. App. LEXIS 250 (1991), writ of certiorari denied by 504 U.S. 928, 112 S. Ct. 1988, 118 L. Ed. 2d 585, 1992 U.S. LEXIS 2982, 60 U.S.L.W. 3781 (1992).

Newly discovered evidence that coperspetrators told victim "You got our shit!" would not have caused acquittal in case in which Government's principal witness testified that someone said "Where is the shit?" in prosecution for first-degree felony-murder, attempted robbery while armed, and carrying of pistol without license; affiant's statement did not support claim of right defense and did not taint reliability on witness' testimony. D.C. Code 1981, §§ 22-2401, 22-2902, 22-3202, 22-3204. *Townsend v. United States*, 549 A.2d 724, 1988 D.C. App. LEXIS 196 (1988), writ of certiorari denied by 490 U.S. 1102, 109 S. Ct. 2457, 104 L. Ed. 2d 1011, 1989 U.S. LEXIS 2732, 57 U.S.L.W. 3792 (1989).

Defendant's argument concerning newly discovered evidence based principally on statement made by individual who lived in apartment one floor below victim of felony-murder, not advanced in trial court, was not properly before Court of Appeals on review. *Townsend v. United States*, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by

481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

Evidence which was readily available to defendant at trial to support his alibi defense, but not presented for tactical purposes, was not newly discovered evidence warranting a new trial. D.C. Code SCR, Criminal Rule 33. *Wright v. United States*, 387 A.2d 582, 1978 D.C. App. LEXIS 379 (1978).

— Presumptions and burden of proof, evidence.

Although there is a presumption in favor of holding a hearing on a motion attacking sentence alleging ineffective assistance of counsel, a judge need not hold a hearing if the motion consists of (1) vague and conclusory allegations, (2) palpably incredible claims, or (3) allegations that would merit no relief even if true. *Mozee v. United States*, 963 A.2d 151, 2009 D.C. App. LEXIS 1 (2009), writ of certiorari denied by 556 U.S. 1228, 129 S. Ct. 2175, 173 L. Ed. 2d 1169, 2009 U.S. LEXIS 3435, 77 U.S.L.W. 3610 (2009).

Once movant makes colorable claim which, if true, would provide basis for relief upon motion attacking sentence, trial court should not decide the matter summarily. *Jones v. United States*, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

Presumption in favor of a hearing on motion attacking sentence which alleges ineffective assistance of counsel is even stronger when the claim of ineffectiveness is based on facts that are not already disclosed in the record. *Jones v. United States*, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

When a defendant in a motion attacking sentence raises a claim of ineffective assistance of counsel, there is a presumption that the trial court should conduct a hearing. *Jones v. United States*, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

When a defendant raises a claim of ineffective assistance of counsel in a motion to vacate sentence, he must demonstrate (1) that the attorney's performance fell below the objective standard of reasonableness, and (2) that there is a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have been different; put another way, a defendant must show that counsel's performance was constitutionally deficient and that the deficient performance prejudiced his defense. *Joseph v. United States*, 878 A.2d 1204, 2005 D.C. App. LEXIS 382 (2005).

There is a presumption that a trial judge should hold an evidentiary hearing on a defendant's motion to vacate his sentence on the ground that trial counsel was ineffective. *Joseph v. United States*, 878 A.2d 1204, 2005 D.C. App. LEXIS 382 (2005).

The Court of Appeals presumes that the jury will follow limiting instructions given by the court. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

Record did not support defendant's claim that basis for his objection to challenged portion of instruction on self-defense, which he alleged was burden of proof, was apparent from previous day's discussion; on previous day, among other issues, defendant focused upon reminding jury, in connection with definitions of specific intent and conscious disregard, that they also had to consider whether government had proved that defendant did not act in self-defense, but there was no separate discussion on burden shifting. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

When a defendant's custodial statement has been admitted in violation of *Miranda*, the government, as the beneficiary of a constitutional error, bears the burden of proving beyond a reasonable doubt that the erroneously admitted statement did not contribute to the conviction and that the defendant's decision to testify did not emanate from the admission of his illegally-obtained statement. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Defendant challenging the sufficiency of the evidence bears the heavy burden of showing that the prosecution offered no evidence upon which a reasonable mind could find guilt beyond a reasonable doubt. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

In order to establish existence of plain error, defendant must show that challenged ruling constituted error that was (1) obvious or readily apparent, and clear under current law; and (2) so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of trial. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Government's proffer of evidence of crime for which defendant was not on trial provided clear and convincing evidence of defendant's involvement in prior uncharged crime, if believed, thus supporting admissibility of such prior crimes evidence at trial; government furnished both general time and specific location of incident, specific details of the incident were asserted to the trial court, and government indicated that two eyewitnesses would testify to incident.

Olafisoye v. United States, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

In its proffer of evidence of a crime for which defendant is not on trial, government must show trial court that evidence that it proposes to present during trial would, if believed, clearly and convincingly establish that the uncharged crime occurred and defendants were connected to it. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Although defendant alleged that the trial judge erred because he considered the sex abuse complainant's mental competency to consent to sexual acts in reaching its verdict, even though issue of her competency was not raised or litigated at trial, there was no error since the record did not support the defendant's argument that the trial judge made or relied upon a competency determination and record contained insufficient evidence to overcome presumption that trial judge, in deciding case, disregarded any inadmissible evidence and any improper argument. *Outlaw v. United States*, 854 A.2d 169, 2004 D.C. App. LEXIS 387 (2004).

There is a presumption that a trial judge, in deciding a case, will disregard any inadmissible evidence and any improper argument. *Outlaw v. United States*, 854 A.2d 169, 2004 D.C. App. LEXIS 387 (2004).

In analyzing a question of territorial jurisdiction, appellate court begins with the presumption that an offense charged was committed within the jurisdiction of the court in which the charge is filed unless the evidence affirmatively shows otherwise. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

To establish legally sufficient cause for his failure to raise a claim on direct appeal, appellant must show that he was prevented by exceptional circumstances from raising the claim at the appropriate time. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

Since necessity is an affirmative defense to an unlawful act, the burden is on the defendant to put forth sufficient evidence to satisfy the requisite factors for the defense. *Emry v. United States*, 829 A.2d 970, 2003 D.C. App. LEXIS 530 (2003), writ of certiorari denied by 540 U.S. 1094, 124 S. Ct. 970, 157 L. Ed. 2d 803, 2003 U.S. LEXIS 9282, 72 U.S.L.W. 3407 (2003).

Every defendant in a criminal trial has a right not to testify or not to produce any evidence, and the burden of proving guilt rests with the government. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

The burden, in a plain error analysis, is on defendant to establish that the trial court committed an error that was obvious, that was prejudicial to defendant's substantial rights, and that resulted in a miscarriage of justice or otherwise seriously affected the fairness, integrity or public reputation of judicial proceedings. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

— Reservation of grounds for review, evidence.

Defendant waived appellate review of his claim, on appeal from burglary conviction, that civil protection order against him was defective, where defendant did not appeal from order. *Bodrick v. United States*, 892 A.2d 1116, 2006 D.C. App. LEXIS 80 (2006).

Defendant preserved for appellate review his claim that statements made by codefendants during their plea proceedings should not have been admitted at defendant's trial, even though counsel did not expressly object during defendant's trial to admission of plea statements; counsel filed notice with court that he was joining in all motions made by codefendants at their separate, prior trial, and it was understood that judge at defendant's trial was adopting evidentiary rulings made in codefendants' prior trial. *Williams v. United States*, 858 A.2d 978, 2004 D.C. App. LEXIS 455 (2004).

Defendant did not waive appellate review of Jencks issue, regarding his request for unavailable declarant's grand jury testimony which might impeach excited utterance admitted at trial under hearsay exception, though the issue was not identified as one of the three questions presented in defendant's appellate opening brief and instead was presented in a footnote consisting of 25 single-spaced lines; the footnote succinctly but effectively explained the Jencks issue, the government's reply brief contained a responsive footnote consisting of 22 single-spaced lines with citations to supporting authority, and supplemental briefing ordered by the appellate court after oral argument allowed the Jencks issue to be fully briefed. *Watkins v. United States*, 846 A.2d 293, 2004 D.C. App. LEXIS 156 (2004).

Court of Appeals would deem abandoned issue of whether defendant's statement to police should be suppressed on ground that, although defendant was in custody, statement was spontaneous declaration, as defendant made no argument in his brief to support suppression of statement. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

A party objecting to the admission of evidence in a criminal proceeding must do so timely in order to preserve the issue for appellate review.

Ebron v. United States, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Murder defendant's objection to threats evidence admitted through witness's direct examination testimony describing manner in which two trial spectators made throat-slashing gestures during witness's testimony satisfied purpose behind "contemporaneous objection rule," by putting trial court on notice of objection, the reason for it, and the relief sought, thus preserving for appellate review issue as to whether defendant was prejudiced by evidence; in making the objection, defense counsel argued that the fact that gestures might have been made "doesn't necessarily mean that it was because of [codefendants]." *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Defendant's claim that prosecutor improperly showed to jury graphic and inflammatory color photographs during rebuttal argument of murder prosecution, was properly preserved for appellate review, where trial judge considered the propriety of prosecutor's actions and gave curative instruction regarding such matter. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

Pretrial motion preserved defendant's constitutional challenge to the admission of statements allegedly against penal interest, even though the defendant did not specifically mention the confrontation clause in his opening brief. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Trial concession by defense that injuries which prompted removal of 16 inches of assault victim's small intestine were permanent as needed to support mayhem conviction, precluded challenge to injury requirement on appeal. *McKinnon v. United States*, 644 A.2d 438, 1994 D.C. App. LEXIS 100 (1994), writ of certiorari denied by 513 U.S. 1005, 115 S. Ct. 523, 130 L. Ed. 2d 428, 1994 U.S. LEXIS 8113, 63 U.S.L.W. 3386 (1994).

Defendant did not move before trial to suppress handgun, as required by statute and court rules, and absent allegation of good cause for his failure to do so, he waived issue on appeal. D.C. Code 1973, § 23-104(a)(2); Criminal Rules 12(b)(3), 47-1(c). *Streater v. United States*, 478 A.2d 1055, 1984 D.C. App. LEXIS 442 (1984).

— Sufficiency of evidence.

In reviewing claims of evidentiary insufficiency, Court of Appeals will reverse only if

there is no evidence upon which a reasonable mind may fairly find guilt beyond a reasonable doubt. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

In reviewing claims of evidentiary insufficiency, Court of Appeals must view the evidence in the light most favorable to the government, recognizing the province of the trier of fact to resolve questions of credibility and draw justifiable inferences. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

When reviewing claims of insufficiency of evidence to support a conviction, the Court of Appeals must view all the evidence in the light most favorable to the government and give deference to the right of the fact finder to weigh the evidence, determine the credibility of the witnesses, and draw all justifiable inferences of fact, making no distinction between direct and circumstantial evidence. *Smith v. United States*, 899 A.2d 119, 2006 D.C. App. LEXIS 217 (2006).

Evidence will be held insufficient to support a conviction only if there is no evidence upon which a reasonable mind could infer guilt. *Hines v. United States*, 890 A.2d 686, 2006 D.C. App. LEXIS 12 (2006).

When reviewing a challenge to the sufficiency of the evidence to support a conviction, the Court of Appeals draws no distinctions between direct and circumstantial evidence, and the government is not required to negate every possible inference of innocence. *Hines v. United States*, 890 A.2d 686, 2006 D.C. App. LEXIS 12 (2006).

When the Court of Appeals considers a claim of evidentiary insufficiency to support a conviction, it must view the evidence in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Hines v. United States*, 890 A.2d 686, 2006 D.C. App. LEXIS 12 (2006).

In reviewing a claim of insufficient evidence, appellate court must determine whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, reviewing the evidence in the light most favorable to the government, and giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact; appellate court does not distinguish between direct and circumstantial evidence. *Hines v. United States*, 890 A.2d 686, 2006 D.C. App. LEXIS 12 (2006).

In considering a challenge to the sufficiency of the evidence to support a conviction, the Court of Appeals reviews the evidence in the light most favorable to the Government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evi-

dence. *Cullen v. United States*, 886 A.2d 870, 2005 D.C. App. LEXIS 625 (2005).

In reviewing the denial of a motion for judgment of acquittal, the Court of Appeals considers the evidence in the light most favorable to the government, recognizing the right of the jury to resolve issues of credibility and to draw justifiable inferences; the Court of Appeals will reverse only where the government has failed to present evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt. *Johnson v. United States*, 883 A.2d 135, 2005 D.C. App. LEXIS 488 (2005).

Court of Appeals reviews the sufficiency of evidence under the same standard as the trial court when considering a motion for judgment of acquittal, i.e., in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Johnson v. United States*, 883 A.2d 135, 2005 D.C. App. LEXIS 488 (2005).

In considering a claim of insufficient evidence, the Court of Appeals must review the evidence in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence. *Williams v. United States*, 881 A.2d 557, 2005 D.C. App. LEXIS 453 (2005), writ of certiorari denied by 546 U.S. 1112, 126 S. Ct. 1132, 163 L. Ed. 2d 892, 2006 U.S. LEXIS 700 (2006).

Reversal based on a claim of insufficient evidence is required only where there is no evidence upon which a reasonable mind could fairly conclude guilt beyond a reasonable doubt, drawing no distinction between direct and circumstantial evidence. *Stroman v. United States*, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

In reviewing claims of insufficient evidence, the appellate court reviews the evidence in the light most favorable to the government, giving it the benefit of all reasonable inferences in its favor. *Stroman v. United States*, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

In order to uphold a denial of a motion attacking a sentence without an evidentiary hearing, the appellate court must be satisfied that under no circumstances could the petitioner establish facts warranting relief. *Stroman v. United States*, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

An appellate court will reverse a conviction only if there is no evidence upon which a reasonable mind may fairly find guilt beyond a reasonable doubt. *Jenkins v. United States*, 877 A.2d 1062, 2005 D.C. App. LEXIS 338 (2005).

In reviewing claims of evidentiary insufficiency, an appellate court must view the evidence in the light most favorable to the govern-

ment, deferring to the province of the jury to weigh the evidence, resolve questions of credibility and draw justifiable inferences. *Jenkins v. United States*, 877 A.2d 1062, 2005 D.C. App. LEXIS 338 (2005).

In evaluating sufficiency of the evidence, appellate court views the evidence in the light most favorable to sustaining the verdict, recognizing that it is the primary role of the factfinder to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Davis v. United States*, 873 A.2d 1101, 2005 D.C. App. LEXIS 257 (2005).

Reversal of a trial court's denial of a motion for judgment of acquittal is warranted only where there is no evidence upon which a reasonable juror could infer guilt beyond a reasonable doubt. *Davis v. United States*, 873 A.2d 1101, 2005 D.C. App. LEXIS 257 (2005).

In reviewing an insufficiency claim, an appellate court reviews the evidence de novo in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Davis v. United States*, 873 A.2d 1101, 2005 D.C. App. LEXIS 257 (2005).

On sufficiency of the evidence challenge, an appellate court must view the evidence in the light most favorable to the government, giving deference to the fact finder's right to weigh the evidence, determine the credibility of the witnesses, and draw inferences from the evidence presented; only if there is no evidence upon which a reasonable mind can infer guilt beyond a reasonable doubt is reversal warranted. *Blackledge v. United States*, 871 A.2d 1193, 2005 D.C. App. LEXIS 155 (2005).

In reviewing a claim of denial of a motion for judgment of acquittal, an appellate court applies the same standard as the trial court in determining whether the evidence was sufficient to support the conviction. *Blackledge v. United States*, 871 A.2d 1193, 2005 D.C. App. LEXIS 155 (2005).

When reviewing the sufficiency of the evidence, the appellate court looks at the evidence in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

On review of denial of motion for judgment of acquittal, appellate court, like the trial court, determines whether the evidence, viewed in the light most favorable to the government, was such that a reasonable juror could find guilt beyond a reasonable doubt. *Griffin v. United States*, 861 A.2d 610, 2004 D.C. App. LEXIS 617 (2004).

In reviewing a claim of evidentiary insufficiency, appellate court views the evidence in the light most favorable to the government, recognizing the province of the fact finder to weigh the evidence, resolve issues of credibility and to draw reasonable inferences from the evidence presented; appellate court will reverse only where the government has failed to present evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt. *Griffin v. United States*, 861 A.2d 610, 2004 D.C. App. LEXIS 617 (2004).

In reviewing a challenge to the sufficiency of the evidence, an appellate court will not distinguish between direct and circumstantial evidence. *Gonzalez v. United States*, 859 A.2d 1065, 2004 D.C. App. LEXIS 518 (2004).

It is only where the government has produced no evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt that an appellate court can reverse a conviction. *Gonzalez v. United States*, 859 A.2d 1065, 2004 D.C. App. LEXIS 518 (2004).

An appellate court reviews the sufficiency of the evidence in a light most favorable to the government, giving it the benefit of all reasonable inferences. *Gonzalez v. United States*, 859 A.2d 1065, 2004 D.C. App. LEXIS 518 (2004).

An appellate court may reverse a conviction for insufficient evidence only if there is no evidence from which a reasonable mind might find the defendant guilty beyond a reasonable doubt. *Gonzalez v. United States*, 859 A.2d 1065, 2004 D.C. App. LEXIS 518 (2004).

In assessing a claim of evidentiary insufficiency, appellate court must view the record in the light most favorable to the government, giving full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Gonzalez v. United States*, 859 A.2d 1065, 2004 D.C. App. LEXIS 518 (2004).

The Court of Appeals reviews the evidence in the light most favorable to sustaining the convictions, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence. *Gonzalez v. United States*, 859 A.2d 1065, 2004 D.C. App. LEXIS 518 (2004).

In reviewing defendant's claim that the evidence was insufficient to establish his guilt beyond a reasonable doubt, Court of Appeals must view the evidence in the light most favorable to the government, recognizing the court's role as trier of fact in weighing the evidence, determining witness credibility, and drawing reasonable inferences from the evidence. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

In reviewing whether there was sufficient evidence to support a conviction, the Court of

Appeals views the evidence in the light most favorable to the prosecution to determine whether a reasonable factfinder could find guilt beyond a reasonable doubt. *Vaas v. United States*, 852 A.2d 44, 2004 D.C. App. LEXIS 295 (2004).

The Court of Appeals considers the claim of insufficiency of evidence in the light most favorable to sustaining the conviction, giving deference to the factfinder's ability to weigh the evidence and make credibility and factual determinations. *Van Buren Peery v. United States*, 849 A.2d 999, 2004 D.C. App. LEXIS 229 (2004).

If the evidence, when viewed in the light most favorable to the government, is such that a reasonable fact-finder must have a reasonable doubt as to the existence of any of the essential elements of the crime, then the evidence is insufficient, and the reviewing court must say so. *Van Buren Peery v. United States*, 849 A.2d 999, 2004 D.C. App. LEXIS 229 (2004).

On review of defendant's challenge to sufficiency of the evidence, Court of Appeals must view evidence in light most favorable to the government. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

In a bench trial, the Court of Appeals will not reverse a conviction for insufficient evidence unless the defendant establishes that the trial court's factual findings were plainly wrong or without evidence to support them. *Cannon v. United States*, 838 A.2d 293, 2003 D.C. App. LEXIS 712 (2003).

In considering a claim of evidentiary insufficiency, the Court of Appeals must view the evidence in the light most favorable to the government, keeping in mind the right of the trier of fact to assess credibility and to draw reasonable inferences from the evidence. *Cannon v. United States*, 838 A.2d 293, 2003 D.C. App. LEXIS 712 (2003).

The Court of Appeals makes no distinction between direct and circumstantial evidence when determining the sufficiency of the government's proof. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

The Court of Appeals will reverse a conviction for insufficient evidence only where the government has failed to present evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

In reviewing a claim of evidentiary insufficiency, the Court of Appeals views the evidence

in the light most favorable to the government, recognizing the province of the fact-finder to weigh the evidence, resolve issues of credibility, and to draw reasonable inferences from the evidence presented. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Appellate review of the sufficiency of the evidence is not toothless; Court of Appeals has an obligation to take seriously the requirement that the evidence in a criminal prosecution must be strong enough that a trier of fact behaving rationally could find it persuasive beyond a reasonable doubt. *Davis v. United States*, 834 A.2d 861, 2003 D.C. App. LEXIS 630 (2003).

Proof of guilt is sufficient if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Davis v. United States*, 834 A.2d 861, 2003 D.C. App. LEXIS 630 (2003).

Judicial review on a challenge to the sufficiency of the evidence is deferential, giving full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Davis v. United States*, 834 A.2d 861, 2003 D.C. App. LEXIS 630 (2003).

Court of Appeals reviews the sufficiency of evidence under the same standard as the trial court, i.e., in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Lyons v. U.S.*, 833 A.2d 481, 2003 D.C. App. LEXIS 618 (2003).

In reviewing a claim of evidence insufficiency, appellate court views the evidence in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Motion for judgment of acquittal should only be granted if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

On a sufficiency of the evidence challenge, the Court of Appeals must view the evidence in the light most favorable to the government, giving deference to the fact finder's right to weigh the evidence, determine the credibility of the witnesses, and draw inferences from the evidence presented, and it can only reverse a conviction on this ground if there is no evidence

upon which a reasonable mind could infer guilt beyond a reasonable doubt. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

In reviewing a claim of evidentiary insufficiency, appellate court views the evidence in the light most favorable to the government, recognizing the right of the trier of fact to resolve issues of credibility and to draw justifiable inferences. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Appellate court will reverse for insufficiency of evidence only where the government has failed to present evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

The Court of Appeals may reverse the judgment only if the evidence was insufficient to permit any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

When assessing claims of evidentiary insufficiency, appellate court must view all the evidence in the light most favorable to the government, keeping in mind the jury's right to assess credibility and to draw reasonable inferences from the evidence it has heard. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

It is only where there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt that the trial court may properly take the case from the jury. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

To reverse, the Court of Appeals must be able to conclude that the evidence, when viewed in favor of the government, is such that a reasonable juror must have a reasonable doubt as to the existence of any of the essential elements of the crime. *Agnew v. United States*, 813 A.2d 192, 2002 D.C. App. LEXIS 737 (2002).

Evidence is deemed insufficient only if the Court of Appeals concludes, as a matter of law, that no impartial factfinder could rationally find guilt beyond a reasonable doubt on the evidence presented. *Agnew v. United States*, 813 A.2d 192, 2002 D.C. App. LEXIS 737 (2002).

In considering the sufficiency of the evidence, the Court of Appeals views the evidence in the light most favorable to the government, recognizing the province of the trier of fact to weigh the evidence, determine the credibility of the witnesses, and draw reasonable inferences from the testimony. *Agnew v. United States*, 813 A.2d 192, 2002 D.C. App. LEXIS 737 (2002).

Appellate court will reverse a conviction for insufficiency of the evidence only where there is no evidence upon which a reasonable mind

could infer guilt beyond a reasonable doubt. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

In weighing a claim of evidentiary insufficiency, appellate court must view the evidence in the light most favorable to the government, draw all reasonable inferences from that evidence, and defer to the jury the right to weigh the credibility of witnesses. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Juries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has some questionable feature. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Almost invariably, weaknesses in eyewitness identification testimony go to weight, not admissibility. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Convictions can be sustained on the basis of the testimony of a single eyewitness. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Appellate court will not reverse a conviction based on insufficiency of evidence unless there is no evidence from which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

On a challenge to sufficiency of evidence to support conviction, appellate court reviews evidence in the light most favorable to the government, giving full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

In determining the sufficiency of the evidence, the appellate court applies the same standards as the trial court; the court views the evidence in the light most favorable to the government, recognizing the province of the trier of fact to weigh the evidence, determine the credibility of the witness and to draw reasonable inference from the testimony. *Harper v. United States*, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

Specific intent is a state of mind particular to the accused, and unless such intent is admit-

ted, it must be shown by circumstantial evidence. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

The Court of Appeals views the evidence in the light most favorable to the government, recognizing the province of the trier of fact to weigh the evidence, determine the credibility of the witnesses, and to draw reasonable inferences from the testimony. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

In reviewing bench trials, the Court of Appeals will not reverse, unless an appellant has established that the trial court's factual findings are plainly wrong or without evidence to support them. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

In reviewing a claim of insufficiency of evidence, the evidence must be viewed in the light most favorable to the government. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

The government is not required to negate every possible inference of innocence before an accused may be found guilty of an offense beyond a reasonable doubt. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

It is only where the government has produced no evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt that an appellate court can reverse a conviction. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

In considering the sufficiency of the evidence, an appellate court makes no distinction between direct and circumstantial evidence, and circumstantial evidence is not intrinsically inferior to direct evidence. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

In determining whether there is sufficient evidence or reasonable inferences therefrom which support the conviction, the appellate court must consider the evidence in the light most favorable to the government. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

In evaluating the sufficiency of the evidence, appellate court views the evidence in the light most favorable to the government, recognizing the factfinder's role in weighing the evidence, determining the credibility of witnesses, and drawing justifiable inferences from the evidence; reversal will be warranted only if the government presented no evidence upon which a reasonable mind could find guilt beyond a reasonable doubt. *York v. United States*, 803 A.2d 1009, 2002 D.C. App. LEXIS 392 (2002).

Challenges to sufficiency of evidence may be preserved in a non-jury proceeding whether or not the defense raises them at trial. *Newby v.*

United States, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

The appellate court reviews claims of insufficiency of the evidence *de novo*, applying the same standard as the trial court. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Caller's statements to detective well after caller placed 911 emergency telephone call were not relevant in determining whether audiotaped call was admissible under exception to hearsay rule for excited utterances; rather, statements to detective went to weight that jury should give to substance of call. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

When assessing evidentiary sufficiency, appellate court's standard of review is necessarily deferential. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

On a challenge to sufficiency of evidence, appellate court views the evidence in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

Evidence may be deemed sufficient to support conviction even if it does not exclude every reasonable hypothesis other than guilt. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

It is only where there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt that the trial court may properly take the case from the jury. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

Inconsistencies in the evidence affect only its weight, not its sufficiency, and are in any event for the jury to resolve. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

On a challenge to the sufficiency of the evidence, the Court of Appeals views the evidence in the light most favorable to the government, recognizing the factfinder's role in weighing the evidence, determining the credibility of witnesses, and drawing justifiable inferences from the evidence. *Bell v. United States*, 790 A.2d 523, 2002 D.C. App. LEXIS 9 (2002).

To prevail on claim that evidence was insufficient to support conviction, defendant must establish that the government presented no evidence upon which a reasonable mind could infer guilt beyond a reasonable doubt. *Bell v. United States*, 790 A.2d 523, 2002 D.C. App. LEXIS 9 (2002).

In reviewing sufficiency claims, the Court of Appeals views the evidence and draws all inferences in the light most favorable to the government; the prosecution need not negate every possible inference of innocence, and evidence is legally insufficient to support a conviction only where there is no evidence upon which a reasonable mind could infer guilt beyond a reasonable doubt. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

An appellate court must deem the proof of guilt sufficient if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

If the evidence, when viewed in the light most favorable to the government, is such that a reasonable juror must have a reasonable doubt as to the existence of any of the essential elements of the crime, then the evidence is insufficient, and the appellate court must say so. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

When considering claims of evidentiary insufficiency in a criminal case, the appellate court views the evidence in the light most favorable to the government. *Nowlin v. United States*, 782 A.2d 288, 2001 D.C. App. LEXIS 208 (2001).

The trial court's factual findings in a bench trial will not be overturned unless they are plainly wrong or without evidence to support them. *Nowlin v. United States*, 782 A.2d 288, 2001 D.C. App. LEXIS 208 (2001).

To prevail on a claim of evidentiary insufficiency, appellant is required to show that the facts did not amount to evidence upon which a reasonable mind could find guilt beyond a reasonable doubt. *Nowlin v. United States*, 782 A.2d 288, 2001 D.C. App. LEXIS 208 (2001).

In reviewing sufficiency of the evidence claims, Court of Appeals views the evidence and draws all reasonable inferences in the light most favorable to the government. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Court of Appeals does not distinguish between direct and circumstantial evidence when reviewing a sufficiency of the evidence claim. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

When reviewing claims of insufficient evidence, the appellate court views the evidence in the light most favorable to the government,

affording the trier of fact great deference in weighing the evidence, assessing witness credibility, and drawing reasonable inferences. *Phillips v. United States*, 778 A.2d 281, 2001 D.C. App. LEXIS 160 (2001).

In evaluating a claim of evidentiary insufficiency, the appellate court must view the evidence in a light most favorable to the government, recognizing the jury's province to weigh the evidence, determine the credibility of witnesses, and make justifiable inferences from the evidence. *Smith v. United States*, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Reversal for insufficiency of the evidence will be warranted only if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. *Smith v. United States*, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

The relevant question on appeal, regarding the sufficiency of the evidence, is whether, after viewing the evidence in a light most favorable to the government, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Smith v. United States*, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Like the trial court, the appellate court does not distinguish between direct and circumstantial evidence in its review of the denial of a motion for judgment of acquittal. *Smith v. United States*, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

The appellate standard of review for claims of insufficient evidence is whether a reasonable factfinder could have found the defendant guilty on the evidence presented by the government. *Mungo v. United States*, 772 A.2d 240, 2001 D.C. App. LEXIS 103 (2001).

Court of Appeals will reverse a conviction on the basis of insufficient evidence only if, after viewing the evidence in the light most favorable to the government, it can be said that the decision is clearly erroneous. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

The Court of Appeals can reverse for insufficiency of the evidence only if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

When addressing a challenge to the sufficiency of the evidence in a criminal case, the evidence must be viewed in the light most favorable to the prosecution to determine whether a reasonable factfinder could find guilt beyond a reasonable doubt. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

For purposes of a challenge to the sufficiency of the evidence in a criminal case, the evidence must support an inference, rather than mere

speculation, as to each element of an offense. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

A conviction will be overturned for insufficient evidence only where there has been no evidence produced from which guilt may reasonably be inferred. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

Motion for judgment of acquittal must be granted if the evidence, when viewed in the light most favorable to the government, is such that a reasonable juror must have a reasonable doubt as to the existence of any of the essential elements of the crime. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

In reviewing claims challenging the sufficiency of the evidence to support a conviction, the Court of Appeals views the evidence and draws all inferences in the light most favorable to the government. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Court of Appeals, when reviewing claims challenging the sufficiency of the evidence to support a conviction, defers to the fact finder's right to weigh the evidence, determine the credibility of witnesses, and draw inferences from the evidence presented. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Court of Appeals does not distinguish between direct and circumstantial evidence when reviewing a claim challenging the sufficiency of the evidence to support a conviction. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Evidence is legally insufficient to support a conviction only where there is no evidence upon which a reasonable mind could infer guilt. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

So as not to displace jury's role, Court of Appeals must review sufficiency of evidence in light most favorable to government, giving full play to jury's right to determine credibility, weigh evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence. *Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

On review of motion to vacate sentence, testimony must be considered most strongly in support of jury's verdict. D.C. Code 1981, § 23-110. *Derrington v. United States*, 488 A.2d 1314, 1985 D.C. App. LEXIS 329 (1985), writ of certiorari denied by 486 U.S. 1009, 108 S. Ct. 1738, 100 L. Ed. 2d 201, 1988 U.S. LEXIS 2187, 56 U.S.L.W. 3789 (1988).

In assessing claim of insufficiency of evidence, Court of Appeals must view evidence in light most favorable to government and must give government benefit of all reasonable infer-

ences. *Miller v. United States*, 479 A.2d 862, 1984 D.C. App. LEXIS 430 (1984).

Court of Appeals is bound to indulge reasonable inferences in favor of government when considering sufficiency of evidence. *Streater v. United States*, 478 A.2d 1055, 1984 D.C. App. LEXIS 442 (1984).

In applying review standard of whether there was sufficient evidence from which reasonable juror could fairly conclude guilt beyond reasonable doubt, Court of Appeals does not distinguish between direct and circumstantial evidence, and reviews insufficient evidence claims in light most favorable to Government, giving full play to right of jury to determine credibility, weigh evidence and draw justifiable inferences of fact. *Garris v. United States*, 465 A.2d 817, 1983 D.C. App. LEXIS 455 (1983), writ of certiorari denied by 465 U.S. 1012, 104 S. Ct. 1013, 79 L. Ed. 2d 243, 1984 U.S. LEXIS 967, 52 U.S.L.W. 3551 (1984).

Court of Appeals, as well as trial court, must presume that allegations of motion to vacate, set aside, or correct sentence are true unless belied by record. D.C. Code 1981, § 23-110. *Smith v. United States*, 454 A.2d 822, 1983 D.C. App. LEXIS 295 (1983).

— Suppression of or failure to disclose evidence.

Potentially exculpatory statement of at least one prospective witness who had been interviewed by police, who allegedly stated that victim was thrown into vehicle by one masked man, should have been provided to defense; defense, bolstered by alibi testimony, was that three people committed kidnapping and murder, that their identities were known, and that defendant was not participant, and government's theory was that four men, including defendant, were involved, and if defense had been able to introduce independent eyewitness testimony suggesting that girls were mistaken when they testified that four men were at vehicle when victim was placed in it, and corroborating testimony to contrary, jury might have viewed differently decisive issue in case. *Boyd v. United States*, 908 A.2d 39, 2006 D.C. App. LEXIS 535 (2006).

Government preserved for appellate review its claim that defendant's confession was sufficiently purged of taint of illegal detention to be admissible in murder trial, where defendant, in his motion to suppress, stated that statements allegedly elicited after defendant's detention were tainted fruit of the Fourth Amendment violations and cited cases that discussed attenuation doctrine, and suppression judge ruled that defendant's confession was causally connected to an illegal seizure. *United States v. McMillian*, 898 A.2d 922, 2006 D.C. App. LEXIS 215 (2006).

In reviewing a denial of a motion to suppress evidence, the Court of Appeals must view the evidence in the light most favorable to the prevailing party. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

In reviewing a denial of a motion to suppress evidence, the trial court's legal conclusion on probable cause is reviewed de novo. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

Court of Appeals, in considering defendant's argument that trial court had erred in refusing to allow defense counsel to read to jury from learned firearms treatise, would apply federal rule of evidence permitting use of learned treatises as substantive evidence to the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, as long as it is established that such literature is authoritative, as Court had cited rule as authority in prior cases, and rule appeared consistent with District of Columbia's law and practice. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

Where trial court determines that the undisclosed Brady material would not have materially affected the verdict, Court of Appeals considers upon review whether that ruling was reasonable. *Powell v. United States*, 880 A.2d 248, 2005 D.C. App. LEXIS 411 (2005).

Trial court's exclusion of witness's testimony as to defendant's reputation for peacefulness was error, in proceeding in which defendant sought to seal records relating to his arrest; even though defendant did not claim self-defense, court found that defendant had acted "without provocation," and nature of proceeding put defendant's character at issue. *Rose v. United States*, 879 A.2d 986, 2005 D.C. App. LEXIS 408 (2005).

On appeal of a trial court's grant of a motion to suppress, appellate court must accept the trial judge's findings of evidentiary fact and his resolution of conflicting testimony. *Rose v. United States*, 879 A.2d 986, 2005 D.C. App. LEXIS 408 (2005).

In reviewing a trial court's decision on a motion to suppress, the appellate court's role is to ensure that the trial court had substantial basis for concluding that no constitutional violation occurred. *Griffin v. United States*, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

In reviewing a trial court's decision on a motion to suppress, the appellate court's review of legal issues presented by the facts is de novo. *Griffin v. United States*, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

In reviewing a trial court's decision on a motion to suppress, the appellate court defers

to the trial court's findings of fact unless clearly erroneous, views the evidence presented at the suppression hearing in the light most favorable to the prevailing party, and draws all reasonable inferences in that party's favor. *Griffin v. United States*, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

An appellate court will not disturb the trial court's factual findings on motion to suppress unless they are clearly erroneous. In re A.F., 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

In reviewing a trial court's ruling on a suppression motion, the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court's ruling. In re A.F., 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

In reviewing the denial of a motion to suppress evidence, the Court of Appeals must accept the trial judge's findings of evidentiary fact and his resolution of conflicting testimony. In re A.F., 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

Defendant was not substantially prejudiced by trial court's erroneous finding that government had not violated discovery rule mandating pretrial disclosure of written summary of testimony of any expert witness that government intended to use during its case-in-chief at trial by failing to disclose opinions of alleged victim's treating physician, in murder prosecution; even without testimony of treating physician regarding entry point of three arm wounds on victim's body, evidence indicated that defendant had shot and pursued victim, and that defendant had not acted in self-defense. *Ferguson v. United States*, 866 A.2d 54, 2005 D.C. App. LEXIS 7 (2005).

In determining whether defendant has been prejudiced by government's failure to comply with discovery rule mandating pretrial disclosure of testimony of any expert witness that government intended to use during its case-in-chief at trial, or whether failure to comply with rule warrants reversal of convictions and new trial, Court of Appeals must determine likelihood that verdict would have been different had government complied with rule, or whether remedy offered by trial court was inadequate to provide defendant with a fair trial; regardless of how standard is phrased, in final analysis, Court of Appeals must be satisfied that defendant was not substantially prejudiced. *Ferguson v. United States*, 866 A.2d 54, 2005 D.C. App. LEXIS 7 (2005).

Trial court's error in finding that government did not violate discovery rule mandating pretrial disclosure of testimony of any expert witness that government intended to use during its case-in-chief at trial was harmless, in murder prosecution; trial court afforded defense opportunity to seek appropriate relief by invit-

ing defense counsel to ask for additional time for preparation in light of expert witness' changed testimony, provided defense counsel could explain the need for more time, and record clearly showed that defense counsel declined to take opportunity since no such request was ever made. *Ferguson v. United States*, 866 A.2d 54, 2005 D.C. App. LEXIS 7 (2005).

Generally, in reviewing a denial of a request for sanctions under criminal discovery rule mandating pretrial disclosure of written summary of testimony of any expert witness that government intends to use during its case-in-chief at trial, the Court of Appeals must ascertain whether the trial court abused its discretion. *Ferguson v. United States*, 866 A.2d 54, 2005 D.C. App. LEXIS 7 (2005).

Where defendant is entitled to discovery, and the trial court denies it, as well as a request for sanctions, the Court of Appeals determines whether the nondisclosure was prejudicial. *Ferguson v. United States*, 866 A.2d 54, 2005 D.C. App. LEXIS 7 (2005).

The Court of Appeals views the evidence on a motion to suppress in the light most favorable to the prevailing party, and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

In considering whether evidence was properly excluded by trial court, an appellate court is highly deferential to the trial court's decision and will not overturn it except on a showing that the trial court gravely abused its discretion. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

Appellate court must accept the trial judge's findings of evidentiary fact, and resolution of conflicting testimony, when reviewing ruling on motion to suppress. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

On review of the denial of a suppression motion, appellate court will not disturb the trial court's factual findings unless they are clearly erroneous, and those findings will only be set aside if they lack substantial support in the record. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

On appeal from the denial of a motion to suppress evidence, the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

A defendant who moves to suppress an identification, in order to prevail on his motion, must show that the identification procedure

was so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification; then, if the procedure is found impermissibly suggestive, the government may defeat the motion and save the identification by carrying the burden of producing evidence to show that, under all the circumstances, the identification was reliable nonetheless. *Hager v. United States*, 856 A.2d 1143, 2004 D.C. App. LEXIS 435 (2004), amended by 861 A.2d 601, 2004 D.C. App. LEXIS 615 (D.C. 2004).

In reviewing a trial court's ruling on a motion to suppress, an appellate court views the evidence in the light most favorable to the government and considers both evidence offered at the suppression hearing and admitted at trial. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Standard of review for a trial court's ruling on a motion to suppress tangible evidence requires that the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court's ruling; factual findings will not be disturbed if supported by substantial evidence, and conclusions of law are reviewed de novo. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Although the Court of Appeals defers to the findings of fact made by the judge ruling on a motion to suppress, the Court of Appeals reviews the judge's legal conclusions de novo. *United States v. Glover*, 851 A.2d 473, 2004 D.C. App. LEXIS 307 (2004).

Scope of appellate review of a denial of a motion to suppress evidence is limited; the reviewing court gives considerable deference to the fact-finder's ability to weigh the evidence, determine witness credibility and draw reasonable inferences therefrom, but reviews the trial court's ultimate conclusions of law de novo. *Griffin v. United States*, 850 A.2d 313, 2004 D.C. App. LEXIS 267 (2004).

When reviewing a trial court's denial of a motion to suppress evidence, Court of Appeals review trial court's findings of fact for clear error and its conclusions of law de novo. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

Favorable evidence is "material" within meaning of Brady doctrine only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of proceeding would have been different. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Because Brady rule encompasses evidence known only to police investigators and not to the prosecutor, the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on government's behalf in case, including police. *Rowland v. United*

States, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Suppression by prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Allegedly exculpatory police documents discussing accidental discharge problems with service weapon of the type involved in fatal shooting of victim, who was a police officer, were not "material" for Brady purposes; prosecution evidence was strong, there was no evidence that victim's weapon was mechanically defective, and evidence that victim's service weapon could have discharged accidentally would not have made the "suicidal gesture" scenario rejected by jury any more likely, nor would the possibility of accidental discharge have rebutted the evidence that defendant fought with victim, grabbed her weapon, and shot her with it. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Court of Appeals construes criminal rule governing discovery and inspection consistently with federal rule from which it is derived. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Reversal of conviction will not be ordered on the grounds of failure to disclose "Brady evidence" tending to be favorable to the accused or evidence that affects the credibility of a government witness absent a further showing that disclosure of the suppressed evidence to competent counsel would have made a different result reasonably probable, meaning a probability sufficient to undermine confidence in the outcome. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

State's delay in disclosing to murder defendants Brady/Giglio material showing that State's witnesses benefitted financially by cooperating and testifying through witness protection program did not result in prejudice warranting remand for evidentiary hearing; defendants did not object to State's procedure in waiting to disclose such information until jury was selected and sworn, and defendants, despite delayed disclosure, were able to use the information extensively in cross-examination to challenge the credibility of witnesses. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

When reviewing the denial of a motion to suppress evidence, appellate court must accept the trial court's findings of fact if they are

supported by the evidence, and must draw all reasonable inferences in favor of sustaining the trial court ruling. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Court of Appeals' review of a motion to suppress evidence is limited; Court views the evidence in the light most favorable to the prevailing party, and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

Court of Appeals, in reviewing a motion to suppress evidence, defers to trial court's findings of fact, but reviews its conclusions of law de novo. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

On appeal from a denial of a motion to suppress evidence, Court of Appeals reviews the legal conclusions of the trial court de novo and defers to its findings of fact. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

When reviewing denial of a motion to suppress evidence, appellate court must view evidence presented at suppression hearing in light most favorable to the government, and draw all reasonable inferences in that party's favor. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

Appellate court would give deference to the trial judge's finding, in denying motion to suppress identifications and the physical evidence that flowed from them, that the identifications were reliable. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

In any appeal challenging the denial of a motion to suppress evidence, the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court. *James v. United States*, 829 A.2d 963, 2003 D.C. App. LEXIS 529 (2003).

Defendant failed to establish that photographs taken of victim at scene of assault, which the prosecution failed to produce, were material, as necessary to establish Brady violation; defense counsel failed to request details from government regarding its efforts to locate photographs, and defense counsel made no comment to assertion of trial court and prosecutor that there was no reason to believe there was anything exculpatory in photographs, but could have explored how that determination was made in absence of photographs. *Cook v. United States*, 828 A.2d 194, 2003 D.C. App. LEXIS 435 (2003).

Failure to disclose evidence that is material either to guilt or to punishment results in a violation of a defendant's due process rights. *Cook v. United States*, 828 A.2d 194, 2003 D.C. App. LEXIS 435 (2003).

On appeal from denial of a motion to suppress evidence, appellate court views the evidence in the light most favorable to the government, drawing all reasonable inferences in the government's favor, but it examines de novo the trial court's legal conclusions. *Cook v. United States*, 828 A.2d 194, 2003 D.C. App. LEXIS 435 (2003).

Appellate court's role, in reviewing the denial of suppression motion that alleges lack of probable cause for issuance of search warrant, is to ensure that the trial court had a substantial basis for concluding that probable cause existed. *Cook v. United States*, 828 A.2d 194, 2003 D.C. App. LEXIS 435 (2003).

The trial court has discretion to exclude marginally relevant evidence creating the danger that it will distract the jury from the issue in this case. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

In reviewing a trial court ruling on a suppression motion, the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Appellate court will overturn the trial court's ruling on the question of disclosing identity of an informer only for an abuse of discretion. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

In reviewing a trial court order denying a motion to suppress evidence, the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

In reviewing a trial court order denying a motion to suppress the Court of Appeals must give deference to the court's findings of fact as to the circumstances surrounding the defendant's encounter with the police and uphold them unless they are clearly erroneous. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Government's failure to obtain and preserve the tape recording of defendant's telephone conversation to his former girlfriend did not constitute a Brady violation or deprive defendant of due process in prosecution for threatening another person, even though officer knew or should have known that defendant's telephone call to the victim was recorded, absent showing of prejudice to defendant or bad faith by government in not obtaining and preserving the recording; defendant did not assert that the tape recording would have been exculpatory. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

In fashioning the appropriate sanction for the government's failure to preserve evidence, the court should weigh the degree of negligence or bad faith involved, the importance of the

evidence lost, and the evidence of guilt adduced at trial in order to come to a determination that will serve the ends of justice. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

In determining whether government's failure to preserve evidence warrants sanctions, the trial court must evaluate (1) the circumstances occasioning the loss; (2) systematic steps taken toward preservation; and (3) the magnitude of demonstrated evidentiary materiality. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Record fully supported the trial court's determination to sanction the government for its Jencks violation in failing to preserve defendant's telephone call from correctional facility, during which his former girlfriend alleged that defendant threatened to beat her up and kill her, where officer knew or should have known of the existence of the recording, and had time to retrieve it, and there was no indication as to the reasons for the delay in arresting and charging defendant, who was identified to police on the day of the offense—a delay which effectively precluded the possibility that defendant could obtain the tape recording. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Government's Jencks violation in failing to preserve defendant's telephone call from correctional facility, during which his former girlfriend alleged that defendant threatened to beat her up and kill her, when officer knew or should have known of the existence of the recording, and had time to retrieve it, warranted sanction to draw all inferences from the missing evidence against the government, given the degree of governmental fault, the potential importance of the missing recording for resolving the complaining witness's credibility on whether defendant threatened her, and the fact that the complainant's uncorroborated testimony was the sole evidence of defendant's guilt in prosecution for threatening another person. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Trial court was precluded from crediting the uncorroborated testimony of the complaining witness beyond a reasonable doubt, in light of its announced sanction to draw all inferences from the missing evidence against the government due to government's Jencks violation in failing to preserve recording of defendant's telephone call to the witness, given that the lost tape recording was of the conversation on which the threats charge was based, and therefore absolutely crucial to guilt or innocence, either corroborating the testimony of the government's only witness or completely undercutting the government's case. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

There is no requirement that a prosecutor simultaneously remind the jury of evidence that may point the other way when asking the jury to return a guilty verdict. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

Government's constitutional duty to disclose material evidence favorable to a criminal defendant in time for the defendant to make effective use of it at trial extends to evidence that could be used to impeach the credibility of a government witness. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Favorable evidence is material under *Brady*, such that its suppression by the government will require reversal of a conviction, if a reasonable probability exists that it would have produced a different verdict, i.e., if government's evidentiary suppression undermines confidence in outcome of trial. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Mere possibility that an item of information not disclosed by government might have helped the defense, or might have affected the outcome of the trial, does not establish "materiality" of such evidence in the constitutional sense. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

There was no reasonable probability of different outcome, in assault prosecution arising from a nonfatal shooting, if government had made pretrial disclosure of statement by alleged accomplice that he handed gun to someone other than defendant; victim, who identified defendant as shooter, never testified that alleged accomplice handed a gun directly to defendant or that defendant even spoke with alleged accomplice, and thus the undisclosed information would not have undermined victim's credibility, but would have tended only to corroborate his identification of defendant rather than alleged accomplice as shooter. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

When an item has been in the possession of government officials charged with its keeping, the court may assume, absent evidence of tampering, that the officials properly discharged their duties. *Benton v. United States*, 815 A.2d 371, 2003 D.C. App. LEXIS 14 (2003).

It is the defendant's burden to establish that, under the Brady doctrine, there is a reasonable probability that favorable evidence by suppressed by prosecution would have produced a different result. *Benton v. United States*, 815 A.2d 371, 2003 D.C. App. LEXIS 14 (2003).

Favorable evidence that is suppressed is "material" under Brady, and requires reversal, if it could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. *Benton v. United States*, 815 A.2d 371, 2003 D.C. App. LEXIS 14 (2003).

Under the Brady doctrine, suppression of favorable evidence by the prosecution requires reversal of a conviction if there is a reasonable probability that the suppressed evidence would have produced a different verdict. *Benton v. United States*, 815 A.2d 371, 2003 D.C. App. LEXIS 14 (2003).

To prevail on a motion to suppress an identification on due process grounds, a defendant must show that the law enforcement procedures used were impermissibly suggestive and that there was not an independent basis to insure the reliability of the identification. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Brady claim, arising from government's failure during pretrial discovery in aggravated armed assault prosecution to disclose victim's grand jury testimony purportedly showing that victim did not initially identify defendant with certainty and that police-sponsored showup procedure was suggestive, was effectively subsumed within ineffective assistance claim, where that grand jury testimony was apparently turned over to defense counsel at time of victim's direct examination and thus was disclosed in time for counsel to have moved for a mistrial or for suppression of victim's identification testimony. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Government is expected, in context of Brady requirement to disclose material exculpatory evidence, to resolve doubtful questions in favor of disclosure. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Trial court may exercise its discretion, under "rule of completeness," to exclude the remainder of a statement after a portion has been entered if it is not relevant or has only slight probative value that is substantially outweighed by dangers of unfair prejudice, confusion of the issues, misleading the jury, or waste of time. *Perry v. United States*, 812 A.2d 924, 2002 D.C. App. LEXIS 741 (2002).

Defendant's Winfield evidence of other, similar crimes by a third party was relevant and exclusion of the evidence warranted a new murder trial; evidence established that co-defendant, with male accomplices, was involved with two similar robberies within two weeks,

both robberies began with the victim meeting with co-defendant to exchange sex-for-money, in both cases co-defendant's accomplices arrived to effectuate the robbery, and first robbery victim testified that defendant was not one of co-defendant's accomplices during the first robbery. *Newman v. United States*, 810 A.2d 918, 2002 D.C. App. LEXIS 671 (2002), amended by 824 A.2d 40, 2003 D.C. App. LEXIS 468 (D.C. 2003).

When reviewing a challenge to the denial of a motion to suppress, appellate court defers to the trial court's findings of fact and all inferences derived therefrom unless they are clearly erroneous. *Newman v. United States*, 810 A.2d 918, 2002 D.C. App. LEXIS 671 (2002), amended by 824 A.2d 40, 2003 D.C. App. LEXIS 468 (D.C. 2003).

Fact that co-defendant had made statement at his plea proceeding that was inconsistent with defendant's innocence was insufficient to overcome defendant's right to call co-defendant to testify; the prior statement could have been used to impeach co-defendant if his trial testimony was inconsistent, and it was for the factfinder to assess the co-defendant's credibility based upon his testimony and any impeaching evidence. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

A prior inconsistent statement is insufficient to preclude the introduction of a co-defendant's testimony when it becomes available. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Trial judge's limitation of cross-examination of witness for prosecution, who identified gun at trial as weapon he had sold to defendant, regarding witness' purported bias, which was alleged to have stemmed from defendant's employment discrimination complaint against witness' superior, was not error in robbery prosecution; proffer of bias was marginal, and thus, inadequate to require judge to permit proposed line of inquiry, and situation before trial judge was rife with potential for confusion of issue and for distraction of jury from question of whether defendant was innocent or guilty. *Coles v. United States*, 808 A.2d 485, 2002 D.C. App. LEXIS 556 (2002), writ of certiorari denied by 540 U.S. 931, 124 S. Ct. 346, 157 L. Ed. 2d 237, 2003 U.S. LEXIS 7207, 72 U.S.L.W. 3245 (2003).

Despite the Sixth Amendment, a trial court has broad discretion to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of issues, witness' safety, or interrogation that is repetitive or only marginally relevant. *Coles v. United States*, 808 A.2d 485, 2002 D.C. App. LEXIS 556 (2002), writ of certiorari denied by 540 U.S. 931, 124 S. Ct. 346, 157 L. Ed. 2d 237, 2003 U.S. LEXIS 7207, 72 U.S.L.W. 3245 (2003).

A proposed line of questioning of prosecution witness may, and should, be disallowed if a trial court concludes that its probative value is substantially outweighed by danger of unfair prejudice, or if the inquiry may divert attention of jury from issue at hand. *Coles v. United States*, 808 A.2d 485, 2002 D.C. App. LEXIS 556 (2002), writ of certiorari denied by 540 U.S. 931, 124 S. Ct. 346, 157 L. Ed. 2d 237, 2003 U.S. LEXIS 7207, 72 U.S.L.W. 3245 (2003).

A trial judge has wide latitude insofar as the confrontation clause is concerned to impose reasonable limits on cross examination. *Coles v. United States*, 808 A.2d 485, 2002 D.C. App. LEXIS 556 (2002), writ of certiorari denied by 540 U.S. 931, 124 S. Ct. 346, 157 L. Ed. 2d 237, 2003 U.S. LEXIS 7207, 72 U.S.L.W. 3245 (2003).

Not everything tends to show bias, and courts may exclude evidence that is only marginally useful for this purpose. *Coles v. United States*, 808 A.2d 485, 2002 D.C. App. LEXIS 556 (2002), writ of certiorari denied by 540 U.S. 931, 124 S. Ct. 346, 157 L. Ed. 2d 237, 2003 U.S. LEXIS 7207, 72 U.S.L.W. 3245 (2003).

Evidence tending only slightly to prove bias may be admitted; however, rejecting such evidence is within discretionary power of a trial court. *Coles v. United States*, 808 A.2d 485, 2002 D.C. App. LEXIS 556 (2002), writ of certiorari denied by 540 U.S. 931, 124 S. Ct. 346, 157 L. Ed. 2d 237, 2003 U.S. LEXIS 7207, 72 U.S.L.W. 3245 (2003).

Defendant was not entitled to argue to the jury in closing arguments of burglary prosecution regarding the government's failure to introduce evidence of blood from the scene of the crime, where government had available evidence of blood at crime scene, but had been prohibited from introducing such evidence by trial court at the urging of defense counsel. *Williams v. United States*, 805 A.2d 919, 2002 D.C. App. LEXIS 489 (2002).

Review of a denial of a motion to suppress physical evidence requires an appellate court to view the facts and all reasonable inferences therefrom in favor of sustaining the trial court ruling. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

In reviewing a denial of a motion to suppress physical evidence, appellate court must ensure that the trial court had a substantial basis for concluding that no constitutional violation occurred. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

When reviewing the denial of a motion to suppress, the appellate court defers to the trial

court's findings of fact, unless they are clearly erroneous or not supported by the record. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

All facts and reasonable inferences are to be viewed in the light most favorable to the government, on appeal from the denial of a motion to suppress. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Investigating officer's failure to disclose that she overlooked a rusted gun later found in the vehicle from which defendant fled, or that she had been subjected to disciplinary proceeding for submitting erroneous item descriptions of her investigation, was not so serious that there would have been a reasonable probability that the suppressed evidence would have produced a different result in prosecution for assault with a deadly weapon (ADW) so as to trigger Brady or Jencks Act sanctions, where only evidence of the assault was testimony of other officers, who identified defendant as person who shot at one of them, and retrieved operable pistol from defendant's flight path. *Bell v. United States*, 801 A.2d 117, 2002 D.C. App. LEXIS 367 (2002), modified and rehearing denied by 817 A.2d 829, 2003 D.C. App. LEXIS 86 (D.C. 2003).

The refusal by the prosecution to disclose material evidence favorable to the defense deprives the defendant of his liberty without due process of law. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Impeaching evidence is exculpatory and thus can be material to guilt or punishment within the meaning of Brady. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Evidence withheld from the defense is "material" within the meaning of Brady if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Brady violation occurred in murder case when government, in response to defendant's Jencks Act request, was allowed to redact portions of eyewitness's grand jury testimony showing that she lied either to the police or the grand jury with respect to another murder that she allegedly observed; the impeachment evidence was material, as question of defendant's innocence or guilt turned entirely on the credibility of the witnesses, eyewitness was arguably government's most important witness, and redacted material would have informed the jury that eyewitness was willing to lie. *Bennett*

v. United States, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

The prosecution must, as a matter of due process, disclose exculpatory material at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Prosecution's production, on first morning of trial and shortly before prosecutor's opening statement, of transcript of grand jury testimony of sole eyewitness did not violate defendant's Brady due process right to disclosure of exculpatory material at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case, in prosecution for first-degree murder while armed; defense counsel had sufficient opportunity to make effective use of that grand jury testimony in his cross-examination of witness, had he chosen to do so. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Defendant did not establish that disclosure of name and address of the only eyewitness to the shooting was "material," as element for a Brady due process violation relating to prosecution's failure to disclose exculpatory evidence; defendant did not show how pre-trial knowledge of witness' name and address could have led to discovery of any exculpatory evidence, nor did he show that earlier disclosure of witness' identity would have been reasonably likely to produce a different outcome in the prosecution for first-degree murder while armed. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Absent a statutory or constitutional requirement, the government need not disclose a list of its witnesses in trials of non-capital offenses. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Witness' grand jury testimony that he had a desire for revenge against the co-defendants was not "exculpatory evidence," and thus, co-defendants did not have a Brady due process right, in prosecution for first-degree murder while armed, to have the prosecution produce a transcript of the grand jury testimony at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Although Brady requires the government to disclose to the defense material exculpatory evidence in its possession, it is not required to create such evidence for the defense. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Any error was harmless in trial court's exclusion of statements that caller made to detective well after caller placed 911 emergency telephone call that was played for jury at trial; defendant failed to have caller testify at trial, caller would have confirmed accuracy of her call had she testified, and call mainly corroborated evidence already presented at trial. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

The appellate court, when reviewing the trial court's ruling on a motion to suppress, views the evidence in the light most favorable to the prevailing party, and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

Any victim impact statement that government intends to introduce at juvenile disposition hearing should be made part of the predisposition report and furnished to the juvenile's counsel; specifically, if Corporation Counsel intends to seek admission of written statements, those should be made available to the report-preparer for timely inclusion, and if the intent instead is to introduce oral statements, a synopsis of these should likewise be included in the report. *In re M.N.T.*, 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

When Court of Appeals is faced with a claim that cross-examination was unduly restricted, the first step is to determine whether the trial court has permitted sufficient cross-examination to comport with the requirements of the Sixth Amendment right to confrontation. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

Generally, the Court of Appeals broadly construes the statute that permits the District to appeal a pre-trial order of the trial court in a criminal case that denies the prosecutor the use of evidence at trial that is a substantial proof of the charge pending against the defendant. *In re F.K.*, 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

Generally, the Court of Appeals does not look behind certifications made by prosecutors pursuant to the statute that permits the District to appeal a pre-trial order of the trial court in a criminal case that denies the prosecutor the use of evidence at trial that is a substantial proof of the charge pending against the defendant. *In re*

F.K., 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

Drug Enforcement Agency (DEA) form providing detailed description of tests performed on controlled substances possessed by defendant was subject to discovery, even though it was not intended for use by government as evidence in chief at trial; competent defense counsel would find form of assistance in deciding whether subpoena of chemist in an attempt to impeach his conclusions would be worthwhile. In re F.K., 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

Under rule requiring discovery of any results or reports of scientific tests or experiments in government's possession, requirement that report be material to preparation of the defense looks only to the potential value of the evidence to competent defense counsel, asking whether there exists a reasonable indication that the requested evidence will either lead to other admissible evidence, assist the defendant in the preparation of witnesses or in corroborating testimony, or be useful as impeachment or rebuttal evidence. In re F.K., 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

Statement of qualifications of chemist who performed tests on controlled substance possessed by defendant was not subject to discovery as a written summary of testimony of expert witness, where chemist was not going to testify at trial as an expert witness in government's case in chief. In re F.K., 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

Curriculum vitae of chemist who tested controlled substance possessed by defendant was subject to discovery, even though chemist was not going to testify at trial, if it existed in form of a document within possession, custody, or control of government. In re F.K., 768 A.2d 1018, 2001 D.C. App. LEXIS 68 (2001).

In reviewing a trial court order denying a motion to suppress, the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

Although witnesses to a crime are the property of neither the prosecution nor the defense and both sides have an equal right and should have an equal opportunity to interview them, reversal on this ground requires a clear showing that the government instructed the witness not to cooperate with the defendant. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Court of Appeals, when reviewing a trial judge's disposition of a motion to suppress, must defer to that judge's finding of evidentiary fact, and view all reasonable inferences therefrom in favor of sustaining his ruling. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Role of the Court of Appeals, when reviewing a trial court's disposition of a motion to suppress, is to ensure that the trial court has a substantial basis for concluding that no constitutional violation occurred. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Under Brady, the refusal by the prosecution to disclose material evidence favorable to the defense deprives the defendant of his liberty without due process of law. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

A violation of due process under Brady occurs when the prosecution fails to disclose, before or during trial, evidence favorable to the defense, and there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, which exists when the government's evidentiary suppression undermines confidence in the outcome of the trial. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Defendant was not entitled to mistrial or continuance of trial on weapons charges due to alleged Brady violation of government in not providing name and grand jury statement of witness who said that she did not see a gun in defendant's car; defendant knew, as early as the date of his arrest, that witness was in his car, and once defendant received the statement and the name of the witness, he delayed in attempting to contact her. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Even assuming that witness's statement, that she did not see a gun in defendant's car, was material, government's failure to disclose statement, in prosecution of defendant on weapons charges, did not violate due process under Brady; nondisclosure was not so serious that there was a reasonable probability that the suppressed evidence would have produced a different verdict, where two police officers testified that they saw the gun in plain view, and there was no defense showing that witness was in a position to see the gun while occupying the front passenger seat in the car. In re J.W., 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Government's failure to disclose to defendant, upon request, information favorable to defendant which is material to guilt or punishment, violates defendant's due process rights. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Favorable evidence is “material,” and due process error results from its suppression by government, if there is a reasonable probability that, had evidence been disclosed to defendant, the result of proceeding would have been different. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

“Reasonable probability” of a different result had favorable evidence been disclosed to defendant is shown, for Brady purposes, when government’s evidentiary suppression undermines confidence in outcome of trial. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Where trial court determines upon motion for new trial that undisclosed Brady material would not have affected materially the verdict, Court of Appeals considers upon review whether that ruling was reasonable. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Assuming that undisclosed police report from another murder case was exculpatory, there was no reasonable probability that the result of trial would have been different, as was required to establish Brady violation, where, at best, assuming admissibility of evidence, it would have provided an additional motive for codefendant’s involvement and solicitation of others to participate in homicide, and that additional

motive, if disclosed, would not have cast doubt on Government’s strong case. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

A violation of due process under Brady occurs when the prosecution fails to disclose, before or during trial, evidence favorable to the defense, and there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, which exists when the government’s evidentiary suppression undermines confidence in the outcome of the trial. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

Impeachment evidence, as well as exculpatory evidence, falls within the Brady rule that requires the prosecution to disclose, before or during trial, evidence favorable to the defense. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

Conviction will not be reversed for prosecutor’s violation of Brady duty to disclose material evidence absent showing that disclosure to competent counsel would have made different result reasonably probable, with “reasonable probability” being probability sufficient to undermine confidence in outcome. *Farley v. United States*, 694 A.2d 887, 1997 D.C. App. LEXIS 113 (1997).

Defendant’s conviction of kidnapping while armed and armed robbery did not have to be reversed, based on prosecution’s alleged failure to provide defense during discovery with certain incriminating statements allegedly made by defendant to police officer; error, if any, was not clear or obvious, and there was no miscarriage of justice. D.C. Code 1981, §§ 22-2101, 22-2901, 22-3202. *Quallis v. United States*, 654 A.2d 1281, 1995 D.C. App. LEXIS 41 (1995).

Lack of defense objection at trial to prosecution’s alleged failure to provide defense during discovery with certain incriminating statements allegedly made by defendant to police officer, in prosecution for kidnapping while armed and armed robbery, narrowed appellate review to determination of whether superior court judge committed plain error. *Quallis v.*

United States, 654 A.2d 1281, 1995 D.C. App. LEXIS 41 (1995).

Sentencing procedure in which significant mitigating information was deliberately not presented to trial court due to fear of reprisal against defendant and his counsel did not comport with due process, not only because of the duress itself, but also because of resultant sentence based on incomplete, and thereby inaccurate, information. U.S. Const.Amend. 14. United States v. Hamid, 531 A.2d 628, 1987 D.C. App. LEXIS 440 (1987).

In Court of Appeals' review of the alleged suppression of a "deal" for testimony, Court reviews nature of promise, if any, and effect its disclosure could have on credibility of witness. D.C. Code 1981, § 23-110. Derrington v. United States, 488 A.2d 1314, 1985 D.C. App. LEXIS 329 (1985), writ of certiorari denied by 486 U.S. 1009, 108 S. Ct. 1738, 100 L. Ed. 2d 201, 1988 U.S. LEXIS 2187, 56 U.S.L.W. 3789 (1988).

— Witness tampering, evidence.

Warnings concerning the dangers of perjury cannot be emphasized to the point where they threaten and intimidate the witness into refusing to testify; however, the mere advising of one individual of his rights, where there is a justifiable occasion for doing so, does not in turn infringe upon the constitutional rights of another even though the election to exercise those rights might deprive the other of a possible advantage in his defense. Brown v. United States, 864 A.2d 996, 2005 D.C. App. LEXIS 2 (2005).

Prosecutor did not intimidate defense witness into invoking her Fifth Amendment rights so as to prevent her from testifying, where prosecutor notified the trial court each time as soon as he realized there was a possibility that the witness might have a Fifth Amendment privilege, and none of the prosecutor's statements regarding the witness's possible exposure to prosecution for obstruction of justice, unauthorized use of a vehicle (UUV), or perjury were made to the witness herself, but rather such statements were made only to counsel and the court out of hearing of the witness. Brown v. United States, 864 A.2d 996, 2005 D.C. App. LEXIS 2 (2005).

Appeals to the passions of the jury, such as the presentation of evidence of threats against a witness, has the potential for great prejudice against the defendant. Sanders v. United States, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Assuming that Court of Appeals could use its supervisory power to dismiss indictments because police officer who was involved in defen-

dant's case allegedly initiated sexual relationship with witness after investigation began, Court would not do so; alleged conduct did not shock the conscience, and there was no indication that prosecution acquiesced in alleged conduct or sought to use alleged relationship either as investigative tool or means of depriving defendants of witness's testimony. U.S. Const.Amend. 14. Newman v. United States, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Findings.

Trial court's conclusion that a statement is against the declarant's penal interest is clearly a legal question, which the Court of Appeals reviews de novo. Hammond v. United States, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

The Court of Appeals is bound by a trial court's findings on whether identification procedures were impermissibly suggestive and whether an identification was reliable if they are supported by the evidence and in accordance with the law. Jones v. United States, 879 A.2d 970, 2005 D.C. App. LEXIS 409 (2005).

Any factual finding anchored in credibility assessments derived from personal observations of the witnesses is beyond appellate reversal unless those factual findings are clearly erroneous. Stroman v. United States, 878 A.2d 1241, 2005 D.C. App. LEXIS 376 (2005).

While the appellate court defers to those findings of fact that are directly related to the judge's presence in the courtroom during evidentiary hearing on post-conviction motion alleging ineffective assistance of trial counsel, findings based on documents or other writings do not merit nearly as much deference, if any at all. Lopez v. United States, 863 A.2d 852, 2004 D.C. App. LEXIS 699 (2004).

In reviewing bench trials, the Court of Appeals will not reverse unless an appellant has established that the trial court's findings are plainly wrong or without evidence to support them. Vaas v. United States, 852 A.2d 44, 2004 D.C. App. LEXIS 295 (2004).

In a bench trial, the Court of Appeals will not reverse the conviction unless an appellant has established that the trial court's factual findings are plainly wrong, or without evidence to support them. Van Buren Peery v. United States, 849 A.2d 999, 2004 D.C. App. LEXIS 229 (2004).

Generally, a sentence within statutory limits is not subject to review. Smith v. United States, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124

S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Appellate review of sentencing is extremely limited. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

In reviewing bench trials, the appellate court will not reverse unless an appellant has established that the trial court's factual findings are plainly wrong, or without evidence to support them. *Harper v. United States*, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

Judicial decisions under rule authorizing trial court to seal a defendant's arrest record constitute findings of fact, and thus, the trial court's factual findings under the rule are reviewed to determine whether they are clearly erroneous. *Harper v. United States*, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

In order to uphold the denial of a motion to vacate sentence without a trial court hearing, the appellate court must be satisfied that under no circumstances could the movant establish facts warranting relief. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

Defendant's motion for new trial presented colorable claim for relief, and should not have been summarily denied without statement of reasons for denial, where defendant alleged that codefendant made threats of violence against defendant and his family to prevent defendant from testifying and from "properly" cross-examining codefendant. *Criminal Rule 33. Geddie v. United States*, 663 A.2d 531, 1995 D.C. App. LEXIS 159 (1995).

Habeas corpus.

— Earlier convictions, habeas corpus.

One may challenge through habeas corpus any earlier criminal conviction that may in some way operate to enhance punishment on a subsequent sentence being served at time of challenge. *Benson v. Meredith*, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Prisoner's "Habeas" Petition in which he asserted that Parole Commission was required under Youth Act to set aside prior robbery conviction because he had been granted unconditional discharge prior to expiration of sentence was, in essence, one seeking relief under §§ 1983 or as appeal to Superior Court's general jurisdiction to do equity, and should have been so construed, rather than as one for habeas relief or motion attacking sentence over which trial court would have no jurisdiction, in that prisoner was essentially requesting that record related to prior conviction be sealed, and therefore, could not be considered in sentencing for subsequent offense. *Norris v. United States*,

927 A.2d 1034, 2007 D.C. App. LEXIS 324 (2007).

— Exhaustion of remedies, habeas corpus.

District court was prohibited by statute from entertaining application for a writ of habeas corpus filed by prisoner in custody pursuant to sentence imposed by Superior Court of District of Columbia, and statute did not merely require exhaustion of local remedies. D.C. Code § 23-110(g). *Swain v. Pressley*, 430 U.S. 372, 97 S. Ct. 1224, 51 L. Ed. 2d 411, 1977 U.S. LEXIS 63 (U.S. Dist. Col. 1977).

Subsection of District of Columbia Reform and Criminal Procedure Act providing that application for writ of habeas corpus in behalf of prisoner who is authorized to apply for relief by motion pursuant to the section shall not be entertained by the superior court or by any federal court if it appears the applicant has failed to make motion for relief under the section or that superior court has denied him relief is not intended to and does not affect the jurisdiction of United States District Court for the District of Columbia to entertain post-conviction habeas petitions from local prisons but rather is an exhaustion of remedies statute, requiring initial submission of claims to the local courts and marking the terminal point for proceedings in the local court system. D.C. Code §§ 23-110, 23-110(g); U.S. Const. art. 1, § 9, cl. 2; art. 3, § 1 et seq.; 18 U.S.C. § 2255. *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

If local courts of District of Columbia withhold effective remedies, the federal courts have the power and duty to provide it. D.C. Code § 23-110(g); U.S. Const. art. 3, § 1 et seq.; 18 U.S.C. § 2241(a, b). *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

Habeas corpus petitioner who had been convicted in Superior Court of District of Columbia for carrying a pistol without a license and who had presented Fourth Amendment claim by pretrial motion to suppress evidence and again on appeal from conviction to the District of Columbia Court of Appeals had exhausted his local remedies despite not having made a motion for postconviction relief under the District of Columbia Court Reform and Criminal Procedure Act. D.C. Code §§ 23-110, 23-110(g); U.S. Const. Amend. 4; 18 U.S.C. §§ 2241, 2241(c). *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

District of Columbia statute relating to entertainment of application for writ of habeas corpus on behalf of prisoner authorized to apply for relief from judgment by motion does not affect jurisdiction of federal district court under federal statutes relating to habeas corpus and operates only as an exhaustion of remedies provision. D.C. Code § 23-110(g); 18 U.S.C. § 2241 et seq. *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

Although District of Columbia defendant's pro se collateral attack, which he styled as motions for new trial, were clearly untimely under rule, where government in opposing motions stated that even treating motions as ones to vacate sentence under statute they were utterly meritless and motions were considered on their merits on appeal to the District of Columbia Court of Appeals defendant had exhausted local remedies, and defendant was entitled to petition for federal writ of habeas corpus. D.C. Code § 23-110; D.C. Code SCR, Criminal Rule 33; 18 U.S.C. § 2241 et seq. *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

Even if prisoner unsuccessfully collaterally attacked conviction, his failure to obtain relief under the provision would not itself be sufficient to demonstrate the inadequacy or ineffectiveness required to support federal court's jurisdiction over application for writ of habeas corpus. *Void-El v. Haynes*, 440 F.Supp.2d 1, 2006 U.S. Dist. LEXIS 50317 (2006).

District of Columbia felony offender must exhaust his remedies in the District of Columbia court system and District of Columbia statute before attacking legality of detention resulting from a Superior Court conviction or sentence in federal post-conviction relief court. *Gant v. Reilly*, 224 F.Supp.2d 26, 2002 U.S. Dist. LEXIS 17144 (2002).

When a felony offender convicted in Superior Court of District of Columbia attacks legality of parole revocation decision made by United States Parole Commission, offender is not required first to exhaust his remedies in Superior Court before seeking federal habeas corpus relief; alleged due process violation arises from exercise of federal agency's discretion pursuant to Congressional delegation of power, not as result of state-level court's exercise of judicial power. *Gant v. Reilly*, 224 F.Supp.2d 26, 2002 U.S. Dist. LEXIS 17144 (2002).

District of Columbia Code offender who was prosecuted in the Superior Court but is detained in that case in a District of Columbia facility as the result of actions by the federal

parole authority should be required to exhaust his District of Columbia habeas remedies before federal district court entertains the challenge to his detention. *Gant v. Reilly*, 224 F.Supp.2d 26, 2002 U.S. Dist. LEXIS 17144 (2002).

— Federal jurisdiction, habeas corpus.

The 1970 District of Columbia Court Reform and Criminal Procedure Act did not require that local, rather than general federal, criminal law, control disposition of collateral attack on malice instruction given in 1963 prosecution, wherein petitioner was convicted of violating the District homicide laws. 18 U.S.C. §§ 1254(1), 2255; D.C. Code 1973, § 11-101 et seq. *U.S. v. Frady*, 102 S.Ct. 1584, 1982 U.S. LEXIS 95 (U.S.Dist.Col. 1982).

Equal protection clause did not require that post-1970 collateral attack on 1963 District of Columbia first-degree murder conviction be treated as though brought under District of Columbia Court Reform and Criminal Procedures Act of 1970 and, thus, challenge to jury instructions was not required to be decided under local, rather than general federal, criminal law. 18 U.S.C. §§ 1254(1), 2255; D.C. Code 1973, § 11-101 et seq.; D.C. Code 1981, §§ 22-2401, 22-2403; U.S. Const. Amends. 5, 14. *U.S. v. Frady*, 102 S.Ct. 1584, 1982 U.S. LEXIS 95 (U.S.Dist.Col. 1982).

Statute generally prohibiting district court from entertaining application for writ of habeas corpus brought by prisoner in custody pursuant to sentence imposed by Superior Court of District of Columbia, which allowed district court to entertain habeas corpus application if it appeared that remedy by motion was inadequate or ineffective to test legality of prisoner's detention, did not suspend privilege of writ of habeas corpus in violation of Constitution. D.C. Code § 23-110(g); U.S. Const. art. 1, § 9, cl. 2. *Swain v. Pressley*, 430 U.S. 372, 97 S. Ct. 1224, 51 L. Ed. 2d 411, 1977 U.S. LEXIS 63 (U.S.Dist.Col. 1977).

Provisions of District of Columbia Code requiring habeas corpus petitions to be filed in D.C. superior court unless directed to federal officer does not divest federal courts of jurisdiction to hear habeas corpus petitions filed by D.C. prisoners under federal statute granting power to district court to grant the writ; the D.C. provisions only state proper place for bringing petitions under D.C. Code, not other sources of authority. 18 U.S.C. § 2241; D.C. Code 1981, § 16-1901(a-c). *Blair-Bey v. Quick*, 151 F.3d 1036, 1998 U.S. App. LEXIS 16931 (C.A.D.C. 1998), remanded by 159 F.3d 591, 333 U.S. App. D.C. 1, 1998 U.S. App. LEXIS 26201 (1998).

District of Columbia prisoner could not maintain federal habeas corpus petition claiming that District of Columbia Court of Appeals

improperly applied harmless error analysis to prisoner's misjoinder claim, where prisoner did not first seek to collaterally attack sentence by motion in sentencing court and failed to establish that such relief was inadequate or ineffective to test legality of his detention, even though sentencing court did not have power to review decision of Court of Appeals. D.C. Code 1981, § 23-110; D.C. Criminal Rule 8(b). *Byrd v. Henderson*, 119 F.3d 34, 1997 U.S. App. LEXIS 18988 (C.A.D.C. 1997).

District of Columbia prisoner has no recourse to federal judicial forum through petition for habeas corpus unless local remedy of collaterally challenging constitutionality of conviction by moving for vacatur of sentence is inadequate or ineffective to test legality of his detention, though prisoners sentenced by state courts may resort to federal habeas corpus after exhaustion of their state remedies. 18 U.S.C. § 2253; D.C. Code 1981, § 23-110. *Garris v. Lindsay*, 794 F.2d 722, 1986 U.S. App. LEXIS 26358 (C.A.D.C. 1986), writ of certiorari denied by 479 U.S. 993, 107 S. Ct. 595, 93 L. Ed. 2d 595, 1986 U.S. LEXIS 5034, 55 U.S.L.W. 3392 (1986).

District court had jurisdiction to entertain petition for habeas corpus by District of Columbia prisoner who was not convicted in Superior Court of District of Columbia, but who sought to bar retrial in that court after declaration of mistrial. D.C. Code §§ 23-110, 23-110(a, g). *Sedgwick v. Superior Court for District of Columbia*, 584 F.2d 1044, 1978 U.S. App. LEXIS 9978 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 1075, 99 S. Ct. 849, 59 L. Ed. 2d 42, 1979 U.S. LEXIS 337 (1979).

Because District of Columbia Code provision governing remedies on motion attacking sentence does not provide a remedy for claims of ineffective assistance of appellate counsel, a federal district court may review a federal habeas petition asserting ineffective assistance of appellate counsel after the petitioner has moved to recall the mandate in the District of Columbia Court of Appeals. *Sanders v. Caraway*, 2012 WL 1632862 (2012).

Petitioner's remedies in District of Columbia court to attack the constitutionality of his convictions and sentence for murder and related offenses under District of Columbia law were not inadequate or ineffective merely because his prior attempts to vacate his conviction and sentence in the District of Columbia courts were unsuccessful, and thus federal court lacked jurisdiction to consider his habeas petition. *Spencer v. United States*, 806 F.Supp.2d 209, 2011 U.S. Dist. LEXIS 97448 (2011), appeal dismissed by 2012 U.S. App. LEXIS 4314 (D.C. Cir. Mar. 1, 2012).

Habeas petitioner failed to exhaust his remedies in District of Columbia court, as required for federal district court to have jurisdiction over his claim for ineffective assistance of ap-

pellate counsel, where petitioner did not move to recall the mandate in his case before the District of Columbia Court of Appeals. *Spencer v. United States*, 806 F.Supp.2d 209, 2011 U.S. Dist. LEXIS 97448 (2011), appeal dismissed by 2012 U.S. App. LEXIS 4314 (D.C. Cir. Mar. 1, 2012).

Defendant failed to show that motion for post-conviction relief was inadequate or ineffective to address Brady claim of withheld evidence and, thus, defendant's habeas petition would be dismissed for want of jurisdiction; contrary to defendant's representation, District of Columbia courts in fact denied post-conviction motion on its merits and, thus, did not effectively render motion inadequate or ineffective by denying relief as procedurally barred, nor did their denial of relief on motion have that effect. *Wright v. Stansberry*, 677 F.Supp.2d 286, 2010 U.S. Dist. LEXIS 1246 (2010).

Under District of Columbia code, collateral challenges to sentences imposed by the District of Columbia court must be brought in that court. *Williams v. Martinez*, 559 F.Supp.2d 56, 2008 U.S. Dist. LEXIS 46802 (2008), reversed by, remanded by 586 F.3d 995, 388 U.S. App. D.C. 316, 2009 U.S. App. LEXIS 25098 (2009).

Habeas corpus petitioner's recourse lay in first instance in District of Columbia superior court, and, thus, district court lacked jurisdiction to hear habeas petition of inmate incarcerated at District of Columbia correctional facility; Congress had provided prisoners incarcerated pursuant to superior court sentence with local remedy in District of Columbia which was adequate and effective to test legality of detention. 18 U.S.C. § 2254; D.C. Code 1981, § 23-110. *Saleh v. Braxton*, 788 F. Supp. 1232, 1992 U.S. Dist. LEXIS 5335 (1992).

Where District of Columbia superior court judge dismissed juvenile's petition for habeas corpus without prejudice to its being filed in the United States district court for the District of Columbia, the respondent was federal officer, petitioner was charged with federal offense as well as with violations of District of Columbia law and petitioner was challenging the conditions of his confinement, federal court had jurisdiction to consider the petition. D.C. Code §§ 16-1901, 16-2301, 16-2301(3)(A), 22-502, 22-2901, 22-3202, 23-110(d); 18 U.S.C. § 2114; 18 U.S.C. §§ 2241(c)(1, 3), 2254(b, c); U.S. Const. art. 1, § 9, cl. 2; Amend 8. *Bland v. Rodgers*, 332 F. Supp. 989, 1971 U.S. Dist. LEXIS 12463 (1971).

The District of Columbia Court Reform and Criminal Procedure Act of 1970 extinguishes traditional authority of federal court to review local judicial actions in the District of Columbia by the issuance of writs of habeas corpus. D.C. Code §§ 16-1901, 23-110(d); 18 U.S.C. § 2254(b, c). *Bland v. Rodgers*, 332 F. Supp. 989, 1971 U.S. Dist. LEXIS 12463 (1971).

Although proceedings under federal statute providing habeas corpus remedy for state prisoners and proceedings under federal statute providing post-conviction remedy for federal prisoners are different, petitions filed under both statutes are commonly referred to as habeas corpus petitions. *Williams v. United States*, 878 A.2d 477, 2005 D.C. App. LEXIS 334 (2005), writ of certiorari denied by 551 U.S. 1138, 127 S. Ct. 2988, 168 L. Ed. 2d 715, 2007 U.S. LEXIS 7835, 75 U.S.L.W. 3678 (2007).

— In general.

Inmate imprisoned outside the territorial limits of the District of Columbia was “within the District” within meaning of D.C. statute permitting habeas corpus petition by prisoner confined within the District; the phrase encompasses individuals confined within the District’s correctional facilities located outside the District limits. D.C. Code 1981, § 16-1901. *Blair-Bey v. Quick*, 151 F.3d 1036, 1998 U.S. App. LEXIS 16931 (C.A.D.C. 1998), remanded by 159 F.3d 591, 333 U.S. App. D.C. 1, 1998 U.S. App. LEXIS 26201 (1998).

Allegation of habeas corpus petitioner who had been convicted in District of Columbia Superior Court that he was in custody in violation of the Fourth Amendment stated a recognizable basis for collateral relief. D.C. Code §§ 23-110, 23-110(g); U.S. Const. Amend. 4; 18 U.S.C. §§ 2241, 2241(c). *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

Petitioner released on bail after conviction in Superior Court of District of Columbia was in “custody” within meaning of federal habeas corpus statute. D.C. Code §§ 23-110, 23-110(g); U.S. Const. Amend. 4; 18 U.S.C. §§ 2241, 2241(c). *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

District of Columbia statute making the filing of petition for writ of habeas corpus in the District of Columbia Superior Court the exclusive method for prisoners “under sentence of the Superior Court” had no application to habeas petitioner who held been imprisoned for criminal contempt by judge sitting by designation of District of Columbia Court of Appeals. *Banks v. Smith*, 377 F.Supp.2d 92, 2005 U.S. Dist. LEXIS 13520 (2005).

To meet the in-custody requirement of statute which permits a prisoner in custody to move to vacate his sentence, a prisoner must currently be serving or detained upon a sentence imposed by the Superior Court. *Butler v. United States*, 884 A.2d 1099, 2005 D.C. App. LEXIS 513 (2005).

Trial court lacked jurisdiction to consider inmate’s petition, requesting that court enforce certain treatment under the Youth Rehabilitation Act on his behalf, under statute setting forth remedies on motion attacking sentence; statute expressly set forth relief for only four circumstances, inmate failed to assert any of the four grounds for relief, and inmate’s petition was in essence a habeas petition. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

Trial court was required to hold hearing regarding, rather than summarily dismissing, petition for writ of habeas corpus alleging that parolee had been denied a fair parole revocation hearing because Parole Board had not allowed parolee to be present when complaining witness testified and Board had allowed only parolee’s counsel, and not parolee, to see “victim impact statement” that witness had prepared, though parolee had admitted to two parole violations involving breaking-and-entering witness’ home and violating the protective order obtained by witness, where information from the statement, involving uncharged conduct, may have affected the Board’s choice of sanction for the parole violations. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Issuance of the writ of habeas corpus is simply a means of bringing the petitioner before the Superior Court for a hearing on the petitioner’s claim for relief. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

To be entitled to have the writ of habeas corpus issued, the parolee only needs to present sufficient allegations, which, if proved, would entitle him to relief. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

District of Columbia courts could grant habeas corpus relief only for prisoners incarcerated within the district or in District of Columbia correctional facilities and thus could not grant relief to a prisoner incarcerated in California. D.C. Code 1981, § 16-1901. *Alston v. United States*, 590 A.2d 511, 1991 D.C. App. LEXIS 101 (1991).

To extent that allegations in motion to have sentence vacated merely repeated previously rejected contentions in habeas corpus petition, they need not have been considered by trial court judge. D.C. Code § 23-110. *Hurt v. St. Elizabeths Hospital*, 366 A.2d 780, 1976 D.C. App. LEXIS 431 (1976).

Only the most serious and extraordinary nonconstitutional errors are cognizable for habeas review. Where the defendants alleged neither the denial of a “basic right” nor the violation of court rules, the claim fell short of being a miscarriage of justice or an exceptional circumstance. *United States v. Muskelly*, 124 WLR 1389 (Super. Ct. 1996).

— Inadequacy of remedies, habeas corpus.

Statute prohibiting District Court from en-

tertaining application for a writ of habeas corpus brought by prisoner in custody pursuant to sentence imposed by Superior Court of District of Columbia and relegating such prisoners to collateral relief available in Superior Court was neither ineffective, nor inadequate simply because judges of that Court lacked protections of Article III judges, in that Superior Court judges must be presumed competent to decide all constitutional and other issues that routinely arise in criminal cases. D.C. Code § 23-110(g); U.S. Const. art. 1, § 9, cl. 2. *Swain v. Pressley*, 430 U.S. 372, 97 S. Ct. 1224, 51 L. Ed. 2d 411, 1977 U.S. LEXIS 63 (U.S. Dist. Col. 1977).

District of Columbia prisoner's inability to raise collaterally Sixth Amendment claim litigated and adjudicated on direct appeal from his conviction did not render collateral remedy inadequate or ineffective so that habeas corpus would be available; inmate's habeas corpus petition thus lacked merit and, accordingly, issuance of certificate of probable cause, to permit appeal of district court's denying petition, was not warranted. 18 U.S.C. § 2253; U.S. Const. Amend. 6; D.C. Code 1981, § 23-110. *Garris v. Lindsay*, 794 F.2d 722, 1986 U.S. App. LEXIS 26358 (C.A.D.C. 1986), writ of certiorari denied by 479 U.S. 993, 107 S. Ct. 595, 93 L. Ed. 2d 595, 1986 U.S. LEXIS 5034, 55 U.S.L.W. 3392 (1986).

Mere denial of relief by the District of Columbia courts does not render the local remedy inadequate or ineffective, as required for District of Columbia prisoner to have recourse to a federal judicial forum under federal habeas statutes. *Williams v. Martinez*, 559 F.Supp.2d 56, 2008 U.S. Dist. LEXIS 46802 (2008), reversed by, remanded by 586 F.3d 995, 388 U.S. App. D.C. 316, 2009 U.S. App. LEXIS 25098 (2009).

District of Columbia prisoners have no recourse to a federal judicial forum under federal habeas statutes unless it is shown that the local remedy is inadequate or ineffective to test the legality of their detention. *Williams v. Martinez*, 559 F.Supp.2d 56, 2008 U.S. Dist. LEXIS 46802 (2008), reversed by, remanded by 586 F.3d 995, 388 U.S. App. D.C. 316, 2009 U.S. App. LEXIS 25098 (2009).

District of Columbia prisoner could not bring federal habeas petition challenging conviction absent showing that his motion attacking sentence, which was denied by District of Columbia court, was inadequate or ineffective to test the legality of his conviction and detention. *Williams v. Martinez*, 559 F.Supp.2d 56, 2008 U.S. Dist. LEXIS 46802 (2008), reversed by, remanded by 586 F.3d 995, 388 U.S. App. D.C. 316, 2009 U.S. App. LEXIS 25098 (2009).

District court lacked jurisdiction to consider application for writ of habeas corpus, collaterally attacking District of Columbia (DC) convictions, where defendant made no demonstration

that the remedy available under DC Code was an "inadequate or ineffective" means of challenging his conviction. *Void-El v. Haynes*, 440 F.Supp.2d 1, 2006 U.S. Dist. LEXIS 50317 (2006).

Remedy available to petitioner under District of Columbia statute governing postconviction motions to attack sentence was adequate and effective, and thus, federal district court could not entertain petitioner's habeas corpus petition challenging his District of Columbia convictions on ground of ineffective assistance of counsel, though District of Columbia Superior Court lacked authority to determine effectiveness of petitioner's appellate counsel; the District of Columbia statute provided petitioner with vehicle for raising his claims of ineffectiveness of trial counsel, and challenge to effectiveness of appellate counsel was to be raised in a motion to recall the Court of Appeals' mandate. *Reyes v. Rios*, 432 F.Supp.2d 1, 2006 U.S. Dist. LEXIS 32069 (2006).

Limiting access to federal court for defendants convicted of crimes in District of Columbia by substituting collateral remedy in District of Columbia courts which was neither inadequate nor ineffective to test the legality of detention did not constitute a suspension of writ of habeas corpus, due to safety valve provision calling for habeas review when motion under District of Columbia law was inadequate or ineffective to test detention. *Eastridge v. United States*, 372 F.Supp.2d 26, 2005 U.S. Dist. LEXIS 10279 (2005), appeal dismissed by 2005 U.S. App. LEXIS 28068 (D.C. Cir. Dec. 19, 2005).

District of Columbia prisoners have no recourse to any habeas corpus review unless they can demonstrate that remedy on motion attacking sentence is inadequate or ineffective to test legality of detention. D.C. Code 1981, § 23-110(f, g). *Wilson v. Office of Chairperson*, 892 F. Supp. 277, 1995 U.S. Dist. LEXIS 9841 (1995).

Remedies on motion attacking sentence are not made inadequate merely by petitioner's lack of success in invoking them before seeking habeas corpus relief. D.C. Code 1981, § 23-110. *Wilson v. Office of Chairperson*, 892 F. Supp. 277, 1995 U.S. Dist. LEXIS 9841 (1995).

Mere delay by District of Columbia superior court in deciding motion to vacate or correct sentence does not ordinarily render remedy on motion attacking sentence inadequate or ineffective and, therefore, does not ordinarily permit habeas corpus relief. D.C. Code 1981, § 23-110. *Wilson v. Office of Chairperson*, 892 F. Supp. 277, 1995 U.S. Dist. LEXIS 9841 (1995).

Fact that motions attacking sentence are entertained by term-tenured judges by District of Columbia and are appointed by virtue of grant of legislative authority, rather than lifetime-tenured judges appointed under Article III, does not ordinarily render remedy of attacking

sentence inadequate or ineffective and does not ordinarily permit habeas corpus relief. U.S. Const. Art. 1, § 8, cl. 17, Art. 3, § 1 et seq., D.C. Code 1981, § 23-110. *Wilson v. Office of Chairperson*, 892 F. Supp. 277, 1995 U.S. Dist. LEXIS 9841 (1995).

Statute prohibiting application for writ of habeas corpus by prisoner in custody of District of Columbia officials, unless it appears that remedy of attacking sentence is inadequate or ineffective, merely declares that inadequacy or ineffectiveness of remedy by motion is prerequisite to any court entertaining petition for writ of habeas corpus filed by prisoner challenging sentence imposed by District of Columbia superior court; it does not constitute grant of jurisdiction to United States District Court for District of Columbia or any other court. D.C. Code 1981, § 23-110(g). *Wilson v. Office of Chairperson*, 892 F. Supp. 277, 1995 U.S. Dist. LEXIS 9841 (1995).

District of Columbia prisoners have no recourse to any habeas corpus review until they demonstrate that statutory remedy of motion to vacate is inadequate or ineffective to test the legality of their detention. D.C. Code 1981, § 23-110. *Perkins v. Henderson*, 881 F. Supp. 55, 1995 U.S. Dist. LEXIS 4165 (1995).

District of Columbia prisoner may not complain that statutory remedy of motion to vacate is inadequate, thus allowing him to seek habeas corpus, merely because he was unsuccessful when he invoked it, nor does fact that motions are entertained by term-tenured judges of the District of Columbia, appointed by virtue of grant of legislative authority over the territory, rather than life-tenured Article III judges render the remedy inadequate or ineffective. U.S. Const. Art. 1, § 8, cl. 17; Art. 3, § 1 et seq.; D.C. Code 1981, § 23-110. *Perkins v. Henderson*, 881 F. Supp. 55, 1995 U.S. Dist. LEXIS 4165 (1995).

Federal habeas petition alleging improper transfer from Maryland to District of Columbia in violation of Interstate Agreement on Detainers could not be entertained by district court where petitioner was still in process of collaterally challenging his District of Columbia convictions, and there was no showing that District of Columbia remedy was inadequate or ineffective. D.C. Code 1981, §§ 23-110, 24-701; Md. Code 1957, Art. 41, § 2-201 et seq. *Miles v. Rollins*, 733 F. Supp. 128, 1990 U.S. Dist. LEXIS 3553 (1990).

Four-month period of inactivity on part of District of Columbia Superior Court after defendant's motion for new trial was not a delay rendering such remedy inadequate or ineffective as would make habeas corpus relief available in federal courts, where there was no allegation that official inactivity reflected malice toward petitioner, petitioner apparently made no efforts beyond one or two telephone

calls to press his case, and petitioner's application was withdrawn after four months. 18 U.S.C. § 2254; D.C. Code § 23-110(g). *Jackson v. Jackson*, 491 F. Supp. 445, 1980 U.S. Dist. LEXIS 11884 (1980).

Trial court had no authority to entertain habeas corpus petition of prisoner who had been denied relief under District of Columbia postconviction-relief statute where remedy under later statute was neither inadequate nor ineffective. D.C. Code 1981, § 23-110(g). *Peoples v. Roach*, 669 A.2d 700, 1995 D.C. App. LEXIS 266 (1995).

Prisoner's inability to bring application for relief as postconviction relief motion under District of Columbia statute, because it constituted second or successive motion for similar relief, did not render that remedy "inadequate or ineffective" so as to permit superior court or any other court to entertain petition for writ of habeas corpus. D.C. Code 1981, §§ 23-110, 23-110(g). *Peoples v. Roach*, 669 A.2d 700, 1995 D.C. App. LEXIS 266 (1995).

— Review, habeas corpus.

Section of District of Columbia Code establishing a procedure for collateral review of convictions in the District of Columbia Superior Court and creating exclusive jurisdiction in that court unless the remedy provided by that section was inadequate or ineffective, only divests federal courts of jurisdiction to hear habeas petitions by prisoners who could have raised viable claims pursuant to that section. *Williams v. Martinez*, 586 F.3d 995, 2009 U.S. App. LEXIS 25098 (C.A.D.C. 2009), writ of certiorari denied by 130 S. Ct. 2073, 176 L. Ed. 2d 423, 2010 U.S. LEXIS 2833, 78 U.S.L.W. 3565 (U.S. 2010).

It was not appropriate for district court to dismiss defendant's habeas corpus petition and refer him back to superior court of the District of Columbia where District of Columbia Court of Appeals had clarified that superior court could not proceed under statute which provides for postconviction relief by motion to vacate sentence to "review appellate proceedings," but had not enlightened defendant as to the remedy, if any, still open to him in the local courts. D.C. Code 1981, § 23-110. *Streater v. Jackson*, 691 F.2d 1026, 1982 U.S. App. LEXIS 24484 (C.A.D.C. 1982).

The Supreme Court of the United States would have appellate jurisdiction to issue writ of habeas corpus on behalf of one convicted in the Superior Court of the District of Columbia. D.C. Code §§ 23-110, 23-110(g); U.S. Const. art. 1, § 9, cl. 2; art. 3, § 1 et seq. *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

Although habeas corpus petition was erroneously dismissed by the district court interests of justice did not require the extraordinary course of de novo consideration of the merits by the en banc Court of Appeals, and case would be remanded to the district court. D.C. Code §§ 23-110, 23-110(g); U.S. Const. Amend. 4; 18 U.S.C. §§ 2241, 2241(c). *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

District of Columbia law made habeas-type relief available to each individual § 1983 plaintiff, and thus, even if exception to Heck's favorable-determination requirement for court to exercise jurisdiction over action existed, it was inapplicable to plaintiffs' claims against District of Columbia and individual police officer, alleging various due process and Eighth Amendment cruel and unusual punishment violations related to their convictions for driving while intoxicated (DWI), and claims were barred; plaintiffs had ability to bring habeas claim while on probation or otherwise in custody, to bring motion after sentence to set aside judgment of conviction and withdraw plea, if applicable, or to move for new trial in interests of justice. *Molina-Aviles v. District of Columbia*, 797 F.Supp.2d 1, 2011 U.S. Dist. LEXIS 66670 (2011), motion denied by 824 F. Supp. 2d 4, 2011 U.S. Dist. LEXIS 130963 (D.D.C. 2011).

Appeal of Superior Court's denial of motion to vacate or of habeas corpus petition should be appealed to the District of Columbia Court of Appeals before United States District Court for the District of Columbia attempts to ascertain whether the local remedy is inadequate or ineffective. D.C. Code 1981, §§ 16-1901, 23-110. *Perkins v. Henderson*, 881 F. Supp. 55, 1995 U.S. Dist. LEXIS 4165 (1995).

On appeal from the denial of a petition for writ of habeas corpus, the Court of Appeals would not review the merits of the Parole Board's decision to revoke probation, but only whether the petitioner had been deprived of his legal rights by the manner in which the revocation hearing was conducted, in order to determine whether there had been abuse of discretion. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Hearing, generally.

If it appears that the motion does not state a claim which if established would require the vacation or alteration of the sentence, no hearing is required. *Glass v. United States*, App. D.C., 395 A.2d 796 (1978); *United States v. Hawkins*, 110 WLR 1577 (Super. Ct. 1982).

Because this section is a remedy of virtually last resort, any question whether a hearing is appropriate should be resolved in the affirmative. *Glass v. United States*, App. D.C., 395 A.2d

796 (1978); *United States v. Hawkins*, 110 WLR 1577 (Super. Ct. 1982).

To uphold the denial of an appellant's motion for post-conviction relief without a hearing, the Court of Appeals must conclude that under no circumstances could appellant establish facts warranting relief. *Freeman v. United States*, 971 A.2d 188, 2009 D.C. App. LEXIS 176 (2009).

The Court of Appeals reviews the trial court's denial of an appellant's motion for post-conviction relief without a hearing for an abuse of a discretion. *Freeman v. United States*, 971 A.2d 188, 2009 D.C. App. LEXIS 176 (2009).

Defendant was entitled to a hearing on his new-trial claim that defense counsel was ineffective in prosecution for assault and other offenses for not requesting a Kastigar hearing on whether the state's evidence was tainted by any exposure to defendant's statutorily immunized testimony at earlier hearing on victim's petition for a civil protection order (CPO); counsel knew or should have known that victim and lead detective had been privy to defendant's immunized testimony and that their exposure might taint their forthcoming testimony or other prosecution evidence at trial, and it did not appear that counsel had any tactical reason to forego a Kastigar hearing. *Aiken v. United States*, 956 A.2d 33, 2008 D.C. App. LEXIS 395 (2008).

When considering a motion for a new trial pursuant to the statute governing motions attacking sentences, any question regarding the appropriateness of a hearing should be resolved in favor of holding a hearing. *Aiken v. United States*, 956 A.2d 33, 2008 D.C. App. LEXIS 395 (2008).

Although there is a presumption that the trial court should conduct a hearing on a postconviction motion that alleges ineffective assistance of counsel, the denial of such motion without a hearing can be sustained if the motion has (1) vague and conclusory allegations, (2) palpably incredible claims, or (3) assertions that would not merit relief even if true. *Ransom v. United States*, 947 A.2d 1127, 2008 D.C. App. LEXIS 223 (2008).

Evidentiary hearing was warranted on defendant's claim in motion attacking sentence that trial counsel was ineffective for failing to interview alleged accomplice or to investigate possibility of calling accomplice as a witness at trial to provide potentially exculpatory testimony, in prosecution for distribution of heroin; it could not be discerned how, without hearing from counsel, trial court reached conclusion that not calling accomplice to testify reflected a strategy decision rather than a negligent omission or counsel's failure to communicate with defendant, and, if credited, accomplice's sworn statement that he never received drugs or money from defendant on date of controlled

drug buy would have been exculpatory to defendant. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

No evidentiary hearing was required on defendant's claim in motion attacking sentence that trial counsel was ineffective for failing to properly advise defendant regarding acceptance of a plea offer; defendant's affidavits told trial court little more than that defendant was thinking about taking a guilty plea, and that counsel presented some reasons why trial would be a better option, and affidavits gave trial court no reason for concluding other than that counsel's evaluation of weaknesses of government's case was reasonable professional assistance. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

No evidentiary hearing was required on defendant's claim in motion attacking sentence that trial counsel was ineffective due to lack of preparation for trial, i.e., meeting with defendant only six or seven times for five to ten minutes at a time, with the sole exception of one 20-minute interview; defendant failed to suggest what additional preparation could have been done if counsel had met with him longer or what topics of conversation could have been covered that were not, and, without such information, motion was vague and conclusory. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

No hearing is required on claim of ineffective assistance of counsel raised in a defendant's motion attacking sentence where defendant's motion consists of (1) vague and conclusory allegations, (2) palpably incredible claims, or (3) allegations that would merit no relief even if true. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

When defendant in a motion attacking sentence raises a claim of ineffective assistance of counsel, there is a presumption that the trial court should conduct a hearing; this presumption is even stronger when the claim of ineffectiveness is based on facts that are not already disclosed in the record. *Steward v. United States*, 927 A.2d 1081, 2007 D.C. App. LEXIS 388 (2007).

Evidentiary hearing was warranted on defendant's claim in motion attacking sentence that trial counsel was ineffective for failing to interview and call two alibi witnesses in trial for rape and related crimes; defendant presented affidavits from himself and two witnesses stating that he was elsewhere at time of assaults, statements submitted by defendant included exculpatory information, and although various affidavits and documents contained some conflicting information, defendant offered possible explanations for some conflicts, and apparent contradictions were not so great as to render defendant's claims either vague and conclusory or palpably incredible. *Jones v.*

United States, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

Filing of a motion attacking sentence does not automatically require the trial court to conduct a hearing. *Jones v. United States*, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

Denial of motion to vacate sentence without a hearing is reviewed for abuse of discretion. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

In order to uphold the denial of a motion to vacate a sentence without an evidentiary hearing, an appellate court must be satisfied that under no circumstances could the petitioner establish facts warranting relief. *Hilliard v. United States*, 879 A.2d 669, 2005 D.C. App. LEXIS 384 (2005).

A decision whether to hold an evidentiary hearing on a defendant's motion to vacate his sentence is committed to the sound discretion of the trial court. *Joseph v. United States*, 878 A.2d 1204, 2005 D.C. App. LEXIS 382 (2005).

An evidentiary hearing on a defendant's motion to vacate his sentence is not required when the motion consists of (1) vague and conclusory allegations, (2) palpably incredible claims, or (3) allegations that would merit no relief even if true. *Joseph v. United States*, 878 A.2d 1204, 2005 D.C. App. LEXIS 382 (2005).

Determination of whether to hold a hearing on motion for postconviction relief hinges on the weight and credibility of the defendant's allegations, not the reluctance of potential witnesses or elusiveness of possible evidence. *Metts v. United States*, 877 A.2d 113, 2005 D.C. App. LEXIS 321 (2005).

When a motion for postconviction relief is filed, the trial court should conduct a hearing on the motion. *Metts v. United States*, 877 A.2d 113, 2005 D.C. App. LEXIS 321 (2005).

Evidentiary hearing on motion for new trial for murder and weapons offenses was not warranted for claims of ineffective assistance of counsel that were vague and conclusory or which could be resolved based on review of available record. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

Whether to hold a hearing on a motion to vacate a sentence is a matter committed to the sound discretion of the trial court. *Forte v. United States*, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

Evidentiary hearing and findings of fact were required to determine defense counsel's actual

belief on whether he was ethically constrained in cross-examining crucial prosecution witness with whom he had earlier had a conversation over a tentative attorney-client relationship, its impact, if any, on defendant's consent to his continued representation, and whether it affected defensive strategy followed in cross-examining witness, for purposes of defendant's ineffective assistance of counsel claim premised on conflict of interest. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

There is a presumption that a trial judge should conduct a hearing on a motion attacking a sentence. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

Trial court has discretion in deciding whether a hearing is needed on a motion to set aside sentence based on ineffective assistance of counsel. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Where existing record provides an adequate basis for disposing of motion to set aside sentence based on ineffective assistance of counsel, the trial court may rule on the motion without holding an evidentiary hearing. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

If no genuine doubt exists about the facts that are material to motion attacking sentence based on ineffective assistance of counsel, the court may conclude that no evidentiary hearing is necessary. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Failure to hold evidentiary hearing on motion to set aside sentence based on alleged ineffective assistance of counsel in not calling four witnesses whose testimony purportedly would have substantiated defense that it was another person who fired shots giving rise to assault prosecution was not abuse of discretion; defendant did not identify any material factual issue that required an evidentiary hearing, there was no important conflict in affidavits before the court, and defendant's challenge related to soundness of counsel's reasons for not calling those witnesses and thus presented a question of law. *Ginyard v. United States*, 816 A.2d 21, 2003 D.C. App. LEXIS 32 (2003), writ of certiorari denied by 538 U.S. 1066, 123 S. Ct. 2237, 155 L. Ed. 2d 1123, 2003 U.S. LEXIS 4218, 71 U.S.L.W. 3735 (2003).

Even assuming motion attacking sentence based on alleged ineffective assistance of coun-

sel pleaded sufficient facts to show a deficiency in counsel's performance, hearing on motion was not required in view of defendant's failure to specify how such deficiency prejudiced him by affecting outcome of trial. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Allegations in motion attacking sentence, that trial counsel rendered ineffective assistance by failing to visit defendant enough before or after trial, to subpoena unnamed witnesses, to sufficiently prepare for trial, to adequately prepare defendant to testify, to file unspecified motions, and to file post-trial motions, were merely conclusory, providing no factual basis for a claim of ineffective assistance, and thus were insufficient to require a hearing. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Decision whether to conduct a hearing on a motion attacking sentence based on alleged ineffective assistance of counsel is confined to the sound discretion of the trial court. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Although there is ordinarily a presumption that a defendant is entitled to a hearing on a motion attacking sentence based on alleged ineffective assistance of counsel, a hearing is not required when the motion consists of (1) vague and conclusory allegations, (2) palpably incredible claims, or (3) allegations that would merit no relief even if true. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Although statute governing attack on sentence for ineffective assistance presumes a hearing, a hearing is not always required when the existing record provides an adequate basis for disposing of the motion. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

Trial court was not required to conduct a hearing prior to admitting lay, non-eyewitness videotape identification testimony in prosecution for gun-related crimes, where defendant and codefendant failed to request a hearing. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

The trial court has discretion to deny a motion to vacate, set aside, or correct the sentence without holding an evidentiary hearing, if the motion consists of (1) vague and conclusory allegations, (2) palpably incredible claims, or

(3) allegations that would merit no relief even if true. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

In order to uphold the denial of a motion attacking a sentence without a hearing, Court of Appeals must be satisfied that under no circumstances could the petitioner establish facts warranting relief. *Lopez v. United States*, 801 A.2d 39, 2002 D.C. App. LEXIS 301 (2002).

Whether to hold a hearing on a motion attacking a sentence is a matter committed to the sound discretion of the trial court. *Lopez v. United States*, 801 A.2d 39, 2002 D.C. App. LEXIS 301 (2002).

Defendant was entitled to a hearing on his motion attacking his sentence based on the alleged ineffectiveness of defendant's trial counsel; defendant submitted the affidavits of three potential defense witnesses who were not called to testify, the witnesses' affidavits of their proposed testimony were all consistent, and the proposed testimony of the witnesses would have supported defendant's theory of self-defense. *Lopez v. United States*, 801 A.2d 39, 2002 D.C. App. LEXIS 301 (2002).

Trial court's denial of defendant's pro se motion to attack sentence without holding a hearing or appointing counsel was not erroneous; judge who decided defendant's motion was trial judge, and thus, was in better situation to determine whether a possibility existed that hearing could have established either constitutionally defective representation or prejudice to defendant. *Shorter v. United States*, 792 A.2d 228, 2001 D.C. App. LEXIS 672 (2001).

A hearing is not automatically required when a defendant raises a pro se motion to attack sentence, especially where the existing record provides an adequate basis for disposing of such motion. *Shorter v. United States*, 792 A.2d 228, 2001 D.C. App. LEXIS 672 (2001).

The trial court's determination whether to hold a hearing on a motion to vacate sentence is discretionary. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

Because a motion to vacate sentence is a remedy of virtually last resort, any non-frivolous question whether a hearing is appropriate should be resolved in the affirmative. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

Three categories of claims do not merit a hearing on a motion to vacate sentence: (1) vague and conclusory allegations; (2) palpably incredible claims; and (3) assertions that would not merit relief even if true. *Lanton v. United States*, 779 A.2d 895, 2001 D.C. App. LEXIS 173 (2001).

Trial court is not required to hold hearing before ruling on motion for new trial. Criminal

Rule 33. *Prophet v. United States*, 707 A.2d 775, 1998 D.C. App. LEXIS 34 (1998).

On motion for new trial, no hearing was required when trial court, after examining proffered affidavit of witness, concluded that material contained in affidavit would not "in all likelihood" result in an acquittal, and explained in detail reasons for its ruling. Criminal Rule 33. *Prophet v. United States*, 707 A.2d 775, 1998 D.C. App. LEXIS 34 (1998).

In general, trial court need not hold hearing before ruling on motion for new trial. Criminal Rule 33. *Geddie v. United States*, 663 A.2d 531, 1995 D.C. App. LEXIS 159 (1995).

Hearing is presumed but not always required on motion for new trial. D.C. Code 1981, § 23-110. *Minor v. United States*, 647 A.2d 770, 1994 D.C. App. LEXIS 158 (1994), writ of certiorari denied by 516 U.S. 935, 116 S. Ct. 347, 133 L. Ed. 2d 244, 1995 U.S. LEXIS 7082, 64 U.S.L.W. 3286 (1995).

Trial judge could properly deny defendant's motion for new trial without hearing where record conclusively showed that he was not entitled to relief he sought because his claims were palpably incredible. Criminal Rule 33; D.C. Code 1981, § 23-110. *Young v. United States*, 639 A.2d 92, 1994 D.C. App. LEXIS 26 (1994).

Once trial judge became aware that defendant was asserting right to testify, trial judge had duty to determine whether she had made knowing and intelligent waiver, and failure of judge to hold hearing was harmful error warranting remand. U.S. Const. Amends. 5, 6, 14. *Boyd v. United States*, 586 A.2d 670, 1991 D.C. App. LEXIS 4 (1991).

Motion filed pursuant to rule relating to new trial should have been evaluated as if it were a motion under statute relating to motion to vacate sentence, where it alleged ineffective assistance of counsel, and thus motion could be denied without hearing only if allegations of motion were vague and conclusory, were wholly incredible, or, even if true, would merit no relief. D.C. Code 1981, § 23-110; Criminal Rule 33; U.S. Const. Amend. 6. *Johnson v. United States*, 585 A.2d 766, 1991 D.C. App. LEXIS 13 (1991).

No hearing is required on motion to set aside conviction and for new trial if record below contains data which belies prisoner's claim, and such contradiction is not susceptible of a reasonable explanation. D.C. Code 1981, § 23-110. *White v. United States*, 484 A.2d 553, 1984 D.C. App. LEXIS 546 (1984).

Trial court did not err in denying defendant's motion to hold hearing on his second motion for new trial on ground of ineffective assistance of counsel, since all of defendant's allegations with respect to contention of ineffective assistance of counsel related solely to facts already in record and only required trial court to apply

the correct legal standard to reach its conclusion as to merits of claim. D.C. Code §§ 23-110, 23-110(c); D.C. Code SCR, Criminal Rule 33. *Glass v. United States*, 395 A.2d 796, 1978 D.C. App. LEXIS 369 (1978).

Motion for new trial alleging ineffective assistance of counsel does not automatically require a hearing; specifications of the motion must be sufficient to indicate lack of fair trial and must withstand initial checking for verity or at least the probability of verity, and it is not sufficient if claim for relief is couched in purely conclusory terms with essentially no factual foundation. D.C. Code § 23-110. *Session v. United States*, 381 A.2d 1, 1977 D.C. App. LEXIS 294 (1977).

Defendant was entitled to hearing on his posttrial motion for new trial based on allegations of deprivation of effective assistance of counsel, in that motion was supported by factual allegations relating primarily to purported occurrences on which record could cast no real light and which trial judge could not completely resolve by drawing on his own personal knowledge or recollection, so that motion and files and records of the case did not conclusively show that defendant was entitled to no relief. D.C. Code § 23-110; D.C. Code SCR, Criminal Rule 33; U.S. Const. Amend. 6. *Session v. United States*, 381 A.2d 1, 1977 D.C. App. LEXIS 294 (1977).

If the petitioner does not state in his motion a claim which, if true, would require vacating his sentence, then no hearing is required. *United States v. Eastridge*, 110 WLR 1181 (Super. Ct. 1982).

Instructions.

Error in giving predeliberation charge given to jury concerning "attitude and conduct of jurors" was not plain error in prosecution for murder; although instruction tilted toward desirability of verdict, jury deliberated for some nine hours before signaling that it could not reach agreement, presence of charge did not seriously affect fairness, integrity or public reputation of judicial proceedings, and charge did not create impermissible risk of jury coercion. *Jones v. United States*, 946 A.2d 970, 2008 D.C. App. LEXIS 213 (2008).

Predeliberation charge given to jury concerning "attitude and conduct of jurors," which stated that final test of quality of jury's service would lie in verdict returned to courtroom, not in opinions jury held as it retired, was error in prosecution for murder; in course of stressing distinction between "opinions" jurors could hold and verdict they reached, charge conveyed evident bias favoring latter, and instruction did not include language balanced against desirability of agreement that reminded jurors not to surrender their honestly held convictions, even if that prevented agreement. *Jones v.*

United States, 946 A.2d 970, 2008 D.C. App. LEXIS 213 (2008).

Trial judge's corrective instruction, in response to prosecutor's misstatements of defense witness's testimony during closing and rebuttal arguments, did not constitute plain error; immediately after defendant objected to prosecutor's misstatements, judge instructed jury that parties disagreed about what witness had said, that judge did not have transcript of witness's testimony and implicitly could not resolve the parties' disagreement from his notes and memory, and that jurors should rely on their own recollections of witness's testimony, defense counsel corrected prosecutor's misstatements in his closing argument, and this was not relatively weak and wholly circumstantial case or case that turned largely on the credibility of witnesses. *Simmons v. United States*, 940 A.2d 1014, 2008 D.C. App. LEXIS 14 (2008).

When responding to jury's questions asking whether charges could be reduced from felonies to lesser felonies or misdemeanors, whether sentencing could be limited to community service, and how jury could recommend lightest sentence possible under the law, trial court did not commit plain error when, while reinstructing the jury, court stated that possible punishment was not relevant to jury's deliberations, advised jury concerning a possible separate recommendation after the verdict provided it was on a separate piece of paper, and stated that court would consider the recommendation, but it was not binding on the court. *Headspeth v. United States*, 910 A.2d 311, 2006 D.C. App. LEXIS 578 (2006).

Trial court's refusal to give missing evidence instruction based on government's failure to produce shirt worn by victim defendant was accused of robbing and shooting was not reversible error, in trial for felony murder and related offenses; evidence did not show that shirt was ever made available to government, and inference that missing shirt would have been adverse to government was not natural and reasonable one under circumstances. *Robinson v. United States*, 890 A.2d 674, 2006 D.C. App. LEXIS 14 (2006).

On a challenge to an anti-deadlock instruction, Court of Appeals' role is to determine whether, from all the surrounding circumstances, it appears that the charge was coercive; the determination of whether coercion exists in a particular case is made by considering the coercive potential of the situation from the jurors' perspective and the effect of the actions of the trial judge in exacerbating or alleviating potential coercion. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

Court of Appeals would review for plain error issue of whether trial court erred in giving jury

second anti-deadlock instruction, as defendant failed to make objection with specificity to instruction in trial court. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

Court of Appeals would review for plain error issue of whether trial court gave improper aiding and abetting instruction, in prosecution for possession of cocaine with intent to distribute, as defendant failed to object to instruction with specificity before jury began its deliberations, as required by rule, despite having had ample opportunity to do so before trial court instructed jury, and even after instruction was complete but before jury retired to deliberate. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

In reviewing a challenged instruction, the Court of Appeals considers the instruction as a whole in the context of the entire charge. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

Defendant's failure to raise objections in the manner required by rule requiring objection to a jury instruction to be raised with specificity before jury begins its deliberations limits the scope of appellate review to plain error. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

Giving of second anti-deadlock instruction to jury during deliberations was not coercive, in prosecution for possession of cocaine with intent to distribute; trial court delivered first anti-deadlock instruction and then dismissed jury for the day, and, after receiving another note from jury on following day stating that jury was deadlocked, trial court gave anti-deadlock instruction in the late morning, but jury did not return verdict until late afternoon. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

In determining whether requested defense instruction was properly denied, the Court of Appeals must review the record in the light most favorable to the defendant. *Fearwell v. United States*, 886 A.2d 95, 2005 D.C. App. LEXIS 556 (2005).

In reviewing claims of instructional errors, Court of Appeals considers the instructions as a whole. *Rorie v. United States*, 882 A.2d 763, 2005 D.C. App. LEXIS 392 (2005).

When a defendant fails to object to a jury instruction in the manner required by rule that mandates a specific objection before the jury retires to consider its verdict, the Court of Appeals is limited to reviewing that instruction for plain error. *Brown v. United States*, 881 A.2d 586, 2005 D.C. App. LEXIS 457 (2005).

The jury is presumed to follow instructions, and the Court of Appeals will not upset the verdict by assuming that the jury declined to do so. *McNeely v. United States*, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

The erroneous submission to the jury of an offense of which the accused is not convicted is not reversible error unless there is prejudice. *Abdus-Price v. United States*, 873 A.2d 326, 2005 D.C. App. LEXIS 204 (2005).

Appellate court reviews allegedly erroneous instruction given for its compatibility with the law. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

As an exception to the general rule disfavoring instructions regarding the weight and credibility of the testimony of specific witnesses or classes of witnesses, the standard instruction on accomplice testimony benefits defendant by admonishing the jury to view cautiously the testimony of an alleged accomplice no matter how small his role, regardless of his degree of participation in the charged crime. *Byrd v. United States*, 870 A.2d 71, 2005 D.C. App. LEXIS 47 (2005).

When there has been objection, the Court of Appeals reviews a trial court's decision on reinstructing the jury for abuse of discretion. *Byrd v. United States*, 870 A.2d 71, 2005 D.C. App. LEXIS 47 (2005).

In determining whether a defense instruction was properly denied, an appellate court reviews the evidence in the light most favorable to the defendant. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

Instructing jury that conscious disregard meant that defendant knowingly engaged in acts that ignored danger of such acts that reasonable person would know could cause death or serious bodily harm was not plain error; jury voting to convict defendant of voluntary manslaughter would not have voted to acquit him if informed of more stringent intent requirement, if properly instructed, it was unlikely that jury would have found that defendant was not subjectively aware that shooting victim in chest created high risk that victim would die or sustain serious injury, and even if defendant stated that he did not intend to kill or injure victim, his conduct reflected subjective awareness of extreme risk of death or serious injury. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Instructing jury that if defendant honestly and reasonably believed that he was acting in self-defense, then self-defense was defense to both second-degree murder and voluntary manslaughter while armed was not plain error; trial court informed jury numerous times that burden was on State to prove that defendant did not act in self-defense and made its burden clear, there was no indication that jury was

confused with regard to burden of proof on self-defense, jury sent no notes to trial court to this effect, and there was sufficient evidence from which jury could find that State proved beyond reasonable doubt that defendant did not act in self-defense. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Instructing jury that specific intent meant defendant knew he was acting wrongfully or was disregarding law when he fired shots at victim was not plain error; this was similar language used in state criminal jury instructions and another case, there was no likelihood that instruction would dilute government's burden of proof, after giving instruction, court immediately added correct statement of law, and instruction did not permit jury to reject defendant's self-defense claim, as trial court explained clearly that it was government's burden to prove beyond reasonable doubt that defendant did not act in self-defense. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

In reviewing claims of instructional errors, Court of Appeals considers the instructions as a whole. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Objections to charges must be specific enough to direct the judges' attention to the correct rule of law and a party's request for jury instructions must be made with sufficient precision to indicate distinctly the party's thesis; the purpose of the rule is to allow the other side to respond and the trial court to correct the error and thereby avoid jettisoning the trial. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

In reviewing the denial of a requested defense instruction, Court of Appeals examines the evidence in the light most favorable to the defendant. *Hernandez v. United States*, 853 A.2d 202, 2004 D.C. App. LEXIS 374 (2004).

Although a trial judge may properly refuse to give a defendant's requested jury instruction where no factual or legal basis for it exists, the failure to give such an instruction where some evidence supports it is reversible error. *Hernandez v. United States*, 853 A.2d 202, 2004 D.C. App. LEXIS 374 (2004).

Defendant waived all but plain error review of trial court's failure to instruct jury on charge

of misdemeanor unlawful possession of marijuana by failing timely to object to such failure. *Smith v. United States*, 847 A.2d 1159, 2004 D.C. App. LEXIS 195 (2004).

In reviewing jury instructions, Court of Appeals looks at the instructions as a whole in assessing whether they constituted prejudicial error. *Bates v. United States*, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

A lesser included offense instruction is proper when the lesser offense consists of some, but not every element, of the greater offense, and the evidence is sufficient to support the lesser charge. *Hawthorne v. United States*, 829 A.2d 948, 2003 D.C. App. LEXIS 532 (2003).

A defendant does not have a unilateral right to pursue a risk-all strategy by opposing a request for a lesser included offense instruction. *Hawthorne v. United States*, 829 A.2d 948, 2003 D.C. App. LEXIS 532 (2003).

Appellate court presumes that jury follows trial court's instructions. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Objections to jury instructions must be made with specificity. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Trial court did not commit plain error by failing to instruct on the "drug-free zone" element of charges of distributing cocaine in a drug-free zone and possession of cocaine with intent to distribute it in a drug-free zone, as no rational jury could have failed to find the element; the jury made the finding on the verdict form despite the lack of an instruction, and there was uncontroverted testimony that defendant possessed the drugs when he was 357 feet away from a school. *Bellamy v. United States*, 810 A.2d 401, 2002 D.C. App. LEXIS 663 (2002).

Curative instruction as given in charge to jury, that results of polygraphs were not admissible in a trial because they were unreliable and that jurors should not let topic come up in their thinking or in their discussions, was sufficient in murder prosecution to cure any prejudice arising from reference by essential government witness to having taken a lie detector test, where curative instruction was delayed until final instructions at defense counsel's request and was crafted by defense counsel. *Welch v. United States*, 807 A.2d 596, 2002 D.C. App. LEXIS 536 (2002), writ of certiorari denied by 537 U.S. 1132, 123 S. Ct. 914, 154 L. Ed. 2d 821, 2003 U.S. LEXIS 380, 71 U.S.L.W. 3473 (2003).

A defendant generally is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor. *Outlaw v. United States*, 806 A.2d 1192, 2002 D.C. App. LEXIS 516 (2002).

Trial court's response to jury's question on subject of constructive possession, during deliberations in weapons prosecution, agreeing that constructive possession could be joint, created impermissible risk that defendant's conviction was grounded in theory unsupported by evidence, where there was no evidence that defendant constructively possessed weapon in possession of anyone else; prosecution relied on sole possession theory at trial and presented no evidence that anyone other than defendant had possessed a weapon, and jury's question and court's answer implicitly assumed that defendant could be convicted if someone else had discarded gun found by police. *Outlaw v. United States*, 806 A.2d 1192, 2002 D.C. App. LEXIS 516 (2002).

Jury's question, in prosecution on weapons possession charges, concerning whether "more than one person [can] have constructive possession of a thing," together with trial court's affirmative answer, assumed, without any evidentiary support, that defendant could be convicted if one of his companions had thrown down gun discovered by police. *Outlaw v. United States*, 806 A.2d 1192, 2002 D.C. App. LEXIS 516 (2002).

The trial court's conditional self-defense jury instruction did not constitute plain error; instruction substantially complied with pattern self-defense jury instructions, the court spent considerable time instructing the jury on self-defense, the court instructed the jury that the State was required to prove beyond a reasonable doubt that defendant did not act in self-defense, defense counsel agreed to the instruction offered by the court, and defendant failed to establish that he was prejudiced by the instruction. *Lopez v. United States*, 801 A.2d 39, 2002 D.C. App. LEXIS 301 (2002).

In examining an alleged error in a jury instruction, the Court of Appeals reviews the instructions in their entirety. *Lopez v. United States*, 801 A.2d 39, 2002 D.C. App. LEXIS 301 (2002).

Defendant charged with aggravated assault failed to preserve for appellate review his contention that trial court's failure to instruct jury on definition of "serious bodily injury" amounted to reversible error, where defendant neither requested such instruction nor failed to object to instructions as given. *Wilson v. United States*, 785 A.2d 321, 2001 D.C. App. LEXIS 240 (2001).

Trial court's failure to instruct jury, in prosecution for aggravated assault, on definition of "serious bodily injury," although error, and arguably in contravention of settled law, did not implicate any substantial right and was not plain error, absent any indication that jury misunderstood elements of offense or that instruction given misled or confused jury, where definition was not integral part of any element

of offense, trial court did not omit any element of offense from final instructions, and evidence that victim suffered protracted loss of vision in his left eye was sufficient to prove serious bodily injury, given that victim was legally blind in his right eye. *Wilson v. United States*, 785 A.2d 321, 2001 D.C. App. LEXIS 240 (2001).

Trial court's failure to instruct jury, in prosecution for aggravated assault, on definition of "serious bodily injury," was arguably in contravention of settled law for purposes of plain error analysis; competent prosecutors and judges reading aggravated assault statute should have known that the words "serious bodily injury" were significant and did not mean simply any type of injury, no matter how small. *Wilson v. United States*, 785 A.2d 321, 2001 D.C. App. LEXIS 240 (2001).

Omission from jury instructions of a definition of a term appearing in an element of the statutory crime is not equivalent, for purposes of plain error analysis, to the omission of an essential element of the crime. *Wilson v. United States*, 785 A.2d 321, 2001 D.C. App. LEXIS 240 (2001).

Assuming that trial court's failure to instruct jury, in prosecution for aggravated assault, on definition of "serious bodily injury" affected some substantial right enjoyed by defendant, such error did not amount to plain error, where defendant could demonstrate neither actual innocence nor any impact on fairness, integrity, or public reputation of his trial; defendant admitted to cutting victim's eyeball during an altercation, and evidence was sufficient to support finding of serious bodily injury. *Wilson v. United States*, 785 A.2d 321, 2001 D.C. App. LEXIS 240 (2001).

Under review for plain error for failure to grant proposed jury instruction, reversal is warranted only in exceptional circumstances where a miscarriage of justice would otherwise result, and thus, a defendant bears the heavy burden of showing that the jury instructions as given were so clearly prejudicial to substantive rights as to jeopardize the very fairness and integrity of the trial. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Error was not harmless, in prosecution for aggravated assault while armed, in trial court's failure to define "serious bodily injury," as medical evidence was conflicting in regard to whether victim's injuries of broken collarbone and arterial bleeding were life threatening, and jury would not necessarily have found serious bodily injury if it were correctly instructed. *Zeledon v. United States*, 770 A.2d 972, 2001 D.C. App. LEXIS 97 (2001).

While curative instructions cannot be counted on to eradicate the harm in every case of prosecutorial misconduct, the trial court's

considered assessment of the situation is entitled to the Court of Appeals' respect. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Jury is presumed to follow the law as given by court. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

The jury is presumed to follow the trial court's instructions. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

In determining whether the evidence presented supports the requested jury instruction, the Court of Appeals must view that evidence in the light most favorable to the party requesting the instruction. *Johnson v. United States*, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

Because the purpose of a lesser-included offense instruction is to provide the jury with the means to convict of the offense properly proven by the evidence, and not to give the jury a choice as between two offenses for both of which there is sufficient evidence, a defendant is not entitled to a lesser-included offense if the disputed facts the jury must find to convict on the lesser-included offense also would suffice, when considered with undisputed facts, to convict on the greater offense. *Johnson v. United States*, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

Refusing to give requested unanimity instruction for armed burglary charge was not plain error given that government clearly articulated its theory of case in closing argument. *McKinnon v. United States*, 644 A.2d 438, 1994 D.C. App. LEXIS 100 (1994), writ of certiorari denied by 513 U.S. 1005, 115 S. Ct. 523, 130 L. Ed. 2d 428, 1994 U.S. LEXIS 8113, 63 U.S.L.W. 3386 (1994).

Instructional errors not raised at trial will not be disturbed on appeal if, for example, evidence of guilt is overwhelming or counsel's failure to object can be viewed as a tactical choice. Criminal Rule 30; D.C. Code 1981, § 11-721(e). *Allen v. United States*, 495 A.2d 1145, 1985 D.C. App. LEXIS 433 (1985).

Certain instructional errors, which touch upon fundamental constitutional principles or call into question the integrity of the verdict, constitute "plain error," and plain error exists if the error that occurred simply could not have

been cured by an immediate objection. D.C. Code 1981, § 11-721(e). *Allen v. United States*, 495 A.2d 1145, 1985 D.C. App. LEXIS 433 (1985).

Under plain-error review, the court necessarily must consider the merits of a challenge to instructions raised for first time on appeal, but an instructional error raised initially on direct appeal will constitute reversible error only when the error complained of is so clearly prejudicial to the complainant's substantial rights as to jeopardize the very fairness and integrity of trial. Criminal Rule 30; D.C. Code 1981, § 11-721(e). *Allen v. United States*, 495 A.2d 1145, 1985 D.C. App. LEXIS 433 (1985).

By failing to object at trial to want of a Bates instruction the defendant had forfeited his right to have appellate court consider on direct appeal the "merits" of his claim under the regular standard of review, i.e., whether failure to give said instruction was error and, if so, whether it was harmless error, and review was limited to whether omission constituted plain error affecting substantial rights. Criminal Rule 30; D.C. Code 1981, § 11-721(e). *Allen v. United States*, 495 A.2d 1145, 1985 D.C. App. LEXIS 433 (1985).

Failure to charge jury, sua sponte, with prior inconsistent statement instruction was not plain error, despite defendant's contention that Government tried to impeach him with a variance between his confession, which was admissible in Government's case-in-chief, and a letter which appellant wrote to the trial court and which was consistent with his trial testimony. *Jefferson v. United States*, 474 A.2d 147, 1984 D.C. App. LEXIS 367 (1984).

Judicial conduct.

Where it is alleged that a jury verdict has been coerced, two inquiries should be made, and the first inquiry is into the inherent coercive potential of the situation before the court, and the second inquiry requires an examination of the actions of the trial judge in order to determine whether these actions exacerbated, alleviated or were neutral with respect to coercive potential, and then the two factors should be viewed together to assess the possibility of actual coercion on any juror or jurors. *Headspeth v. United States*, 910 A.2d 311, 2006 D.C. App. LEXIS 578 (2006).

Appellate court need not find actual bias or prejudice in order to find a violation of the canons of judicial conduct; rather, it need only conclude that the facts might reasonably cause an objective observer to question the judge's impartiality. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

Even if there is no bias in fact, an appearance of bias or prejudice requires recusal of judge if it is sufficient to raise a question in the mind of the average citizen about the judge's impartiality. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

To be disqualifying, the alleged bias and prejudice on part of judge must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

In general, so long as a judge remains open-minded enough to refrain from deciding a case or ruling on a matter until all the evidence has been presented and all the parties allowed to state their positions, any comments the judge makes during the course of the proceedings will not be regarded as a sign of disqualifying bias or prejudice. *Gibson v. United States*, 792 A.2d 1059, 2002 D.C. App. LEXIS 46 (2002), writ of certiorari denied by 536 U.S. 972, 122 S. Ct. 2692, 153 L. Ed. 2d 861, 2002 U.S. LEXIS 5137, 70 U.S.L.W. 3799 (2002).

In cases where either defense counsel, the prosecutor, or both overstep the boundaries of proper argument, the trial judge should take responsibility for maintaining control; swift and stern corrective action by the trial judge is appropriate and may eliminate any prejudice to the defendant. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Appropriate remedy under special harmless error test for trial judge's violation of Judicial Canon requiring him to recuse himself in any proceeding in which his impartiality might reasonably be questioned, arising when judge negotiated for employment with the United States Department of Justice while presiding over criminal case being prosecuted by Department's office of United States Attorney for District of Columbia, was new trial for defendant, even though defendant did not claim that his trial was unfair or that trial judge was actually biased against him. ABA Code of Jud. Conduct, Canon 3, subd. C(1). *Scott v. United States*, 559 A.2d 745, 1989 D.C. App. LEXIS 80 (1989).

Omission of information, as well as submission of material false information or a court's careless interpretation of evidence before it, is sufficient to undermine the validity of a sentencing hearing. *United States v. Hamid*, 113 WLR 2481 (Super. Ct. 1985).

Jury composition.

Trial court made adequate inquiry regarding juror bias, after juror told trial court, on first

full day of deliberations, that on the preceding day she had seen someone she knew in the courtroom, she thought the person was a friend of defendant, and she was afraid because the person knew where she lived; trial court individually questioned four other jurors who had noticed that the juror in question had been upset and who had spoken to her about it, and after looking at their reactions the trial court concluded the four other jurors could be fair and impartial. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

The determination of juror bias or prejudice lies particularly within the discretion of the trial court, reversible only for a clear abuse of discretion. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

The Court of Appeals will not reverse the trial court's exercise of discretion regarding whether to strike a juror for cause unless the juror's partiality is manifest. *Ahmed v. United States*, 856 A.2d 560, 2004 D.C. App. LEXIS 449 (2004), writ of certiorari denied by 544 U.S. 955, 125 S. Ct. 1719, 161 L. Ed. 2d 536, 2005 U.S. LEXIS 2891, 73 U.S.L.W. 3569 (2005).

The trial judge has broad discretion when deciding whether to strike a juror for cause. *Ahmed v. United States*, 856 A.2d 560, 2004 D.C. App. LEXIS 449 (2004), writ of certiorari denied by 544 U.S. 955, 125 S. Ct. 1719, 161 L. Ed. 2d 536, 2005 U.S. LEXIS 2891, 73 U.S.L.W. 3569 (2005).

Any error in trial court's failure to interview "holdout" juror before dismissing her during deliberations was invited by defense counsel's vigorous objection to any interview of "holdout" juror by court, in prosecution for weapons offenses. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

Court of Appeals would not find error in trial court's refusal to grant defense counsel's motion for mistrial, after trial court dismissed juror during deliberations after concluding that juror was not following court's instructions, in prosecution for weapons offenses, especially when no claim of error with respect to trial court's failure to declare mistrial had been asserted on behalf of defendant. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

Determination of juror bias or prejudice lies particularly within the discretion of the trial court, reversible only for a clear abuse of discretion and the findings of fact underlying that determination are entitled to great deference. *Bates v. United States*, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

Dismissal of juror whom trial court found to be in a "distracted, emotional state" due to onset of her husband's illness was not abuse of discretion in criminal prosecution. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

On Batson claim that prosecutor has used peremptory challenges in manner violating equal protection clause, defendant must first make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race; if such showing is made, burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question; finally trial court must determine whether the defendant has carried his burden of proving purposeful discrimination. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Errors adversely affecting exercise of peremptory challenges are not structural errors within meaning of controlling caselaw; consequently, without showing of actual juror bias, they were not per se reversible. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Claims of error involving peremptory challenges are reviewed under plain error standard if issue has not been properly preserved at trial, and under harmless error standard when it has been properly preserved. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Even if there is violation of defendant's right of peremptory challenge, reversal is not required absent showing of actual juror bias. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Where defendant has failed to preserve his peremptory challenge, and claim of error is reviewed under plain error standard, he must demonstrate both that alleged error was obvious or readily apparent, and that it was so clearly prejudicial to his substantial rights as to jeopardize very fairness and integrity of trial. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Trial judge has broad discretion over whether to strike juror for cause and exercise of that discretion will not be reversed unless juror's partiality is manifest. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

To obtain reversal of conviction, appellant must show not only that there was error in trial court's jury selection procedure, but that he suffered prejudice as result of error. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Defendants' right to exercise peremptory challenges were not impaired by addition of jury panel to supplement venire after trial court became aware that venire panel might be too small before any peremptory challenges were used up, where both sides had exercised

nine strikes, the same number of strikes before the supplemental panel was brought in, in total, defense received and was able to use 12 peremptory challenges, two more than rule required, and once entire combined venire panel was known, defendants chose to strike only one juror from supplemental panel, and two from original panel, although they had the opportunity, but chose not to strike others from the supplemental panel. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Whether to excuse a juror after the jury has retired to consider its verdict, and if so, whether to require the remaining jurors to continue deliberating or, alternatively, to declare a mistrial, are discretionary decisions, subject to review for abuse. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

Absent an abuse of discretion during voir dire and substantial prejudice to the accused, the trial court will be upheld. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

A harmless error standard applies to cases challenging the voir dire due to the refusal of the trial court to permit follow-up questions designed to weed out juror bias. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Erroneous refusal to permit the defendant during voir dire to pose follow-up questions to prospective jurors who had close friends or family members in the law enforcement field was harmless in prosecution for murder and drug offenses; the case depended heavily on the testimony of civilian witnesses, rather than that of law enforcement officers, and even if a juror with close friends working for the Department of Justice and the Parole Commission was biased in favor of law enforcement officers, that bias would not have affected jury deliberations and the verdict in light of the testimony by participants in the drug operation. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

To establish prima facie fair cross-section violation in jury selection, defendant must show: (1) that group alleged to be excluded is "distinctive group" in community; (2) that representation of this group in venires from which juries are selected is not fair and reasonable in relation to number of such persons in commu-

nity; and (3) that underrepresentation is due to systematic exclusion of group in jury selection process. U.S. Const.Amends. 5, 6. *Carle v. United States*, 705 A.2d 682, 1998 D.C. App. LEXIS 11 (1998), writ of certiorari denied by 523 U.S. 1066, 118 S. Ct. 1400, 140 L. Ed. 2d 658, 1998 U.S. LEXIS 2417, 66 U.S.L.W. 3655 (1998).

Even if defendant claiming fair cross-section violation in jury selection succeeds in showing that alleged excluded group is distinctive group in community, that representation of group in venires is not fair and reasonable in relation to number of such persons in community, and that underrepresentation is due to systematic exclusion of group in jury selection process, state can justify its procedures of jury selection by demonstrating that they clearly advance significant state interest. U.S.C. Const.Amends. 5, 6. *Carle v. United States*, 705 A.2d 682, 1998 D.C. App. LEXIS 11 (1998), writ of certiorari denied by 523 U.S. 1066, 118 S. Ct. 1400, 140 L. Ed. 2d 658, 1998 U.S. LEXIS 2417, 66 U.S.L.W. 3655 (1998).

Ex-felons were not distinctive group subject to fair cross-section requirement in jury selection. U.S. Const.Amends. 5, 6. *Carle v. United States*, 705 A.2d 682, 1998 D.C. App. LEXIS 11 (1998), writ of certiorari denied by 523 U.S. 1066, 118 S. Ct. 1400, 140 L. Ed. 2d 658, 1998 U.S. LEXIS 2417, 66 U.S.L.W. 3655 (1998).

Groups defined solely in terms of shared attitudes that would substantially impair members of group from performing one of their duties as jurors are not "distinct groups" subject to fair cross-section requirement in jury selection. U.S. Const.Amends. 5, 6. *Carle v. United States*, 705 A.2d 682, 1998 D.C. App. LEXIS 11 (1998), writ of certiorari denied by 523 U.S. 1066, 118 S. Ct. 1400, 140 L. Ed. 2d 658, 1998 U.S. LEXIS 2417, 66 U.S.L.W. 3655 (1998).

Jury plan's exclusion of ex-felons for period of ten years from jury service promoted legitimate state goal of assuring impartiality of verdict, and thus did not violate fair cross-section requirement in jury selection. U.S. Const.Amends. 5, 6. *Carle v. United States*, 705 A.2d 682, 1998 D.C. App. LEXIS 11 (1998), writ of certiorari denied by 523 U.S. 1066, 118 S. Ct. 1400, 140 L. Ed. 2d 658, 1998 U.S. LEXIS 2417, 66 U.S.L.W. 3655 (1998).

Parole.

A District of Columbia prisoner who challenges decisions made regarding his or her parole, but not the original conviction or sentence, is not barred from federal habeas remedies under District of Columbia statute limiting availability of federal habeas relief for challenges to convictions or sentences. *Ramsey v.*

Reilly, 613 F.Supp.2d 6, 2009 U.S. Dist. LEXIS 58387 (2009).

Place of incarceration.

District of Columbia Code section providing that a prisoner in custody under sentence of superior court may move a court to vacate, set aside or correct a sentence applies by its terms only to prisoners "claiming the right to be released" on the ground that "the sentence" is subject to legal attack, and therefore was inapplicable to petitioner alleging illegality of procedures applied to effect his transfer from District of Columbia penitentiary to federal penitentiary; therefore, district court improperly dismissed petition on basis of section of that statute requiring prisoners subject to it to file suit in the superior court. D.C. Code 1981, §§ 23-110, 23-110(g). *Neal v. Director, District of Columbia Dep't of Corrections*, 684 F.2d 17, 1982 U.S. App. LEXIS 17517 (C.A.D.C. 1982).

Pleas.

— Breach of agreement by government, pleas.

Prosecutor's failure at sentencing hearing to mention 96 months, and instead asking judge to "met[e] out justice that makes punishment understandable for this act," did not violate terms of plea agreement that government would recommend sentencing cap of eight years for assault with intent to kill. *Perrow v. United States*, 947 A.2d 54, 2008 D.C. App. LEXIS 222 (2008).

Prosecutor's description, during sentencing allocation, of defendant's pattern of assaults or threats did not breach term of plea agreement that prosecutor would recommend eight-year sentencing cap for assault with intent to kill; prosecutor had not waived allocation, and was allowed to make both recommendation on sentence to be imposed and to present information in support of sentence, especially in light of defendant's request for downward departure sentence between four to eight years. *Perrow v. United States*, 947 A.2d 54, 2008 D.C. App. LEXIS 222 (2008).

Statement in prosecutor's sentencing memorandum that "[j]ustice demands that this Court impose a period of incarceration that is not less than the government requests, i.e., 96 months" for assault with intent to kill, did not breach plea agreement pursuant to which prosecutor would recommend eight-year cap in sentence. *Perrow v. United States*, 947 A.2d 54, 2008 D.C. App. LEXIS 222 (2008).

Prosecutor's reference in footnote of sentencing memorandum to trial court's authority to reject plea agreement that contained recommended sentencing cap of eight years for assault with intent to kill did not constitute

breach of agreement that government would recommend eight-year sentencing cap. *Perrow v. United States*, 947 A.2d 54, 2008 D.C. App. LEXIS 222 (2008).

Government's remarks at sentencing concerning numerous drug convictions against defendant, to effect that defendant should receive "a significant degree of incarceration," did not constitute breach of provision of plea agreement in which government agreed to limit its allocation to four years' incarceration, as government, in making these remarks, was simply explaining its sentencing recommendation to the court, which it had a right to do. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

Defendant bears the burden of establishing that his plea agreement was breached. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

The government is held to a standard of strict compliance with its plea agreement, and the Court of Appeals will construe any ambiguity against the government. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

If the government violates its plea bargain, it is irrelevant that the government's remarks may not have influenced the sentencing judge; the appellate court must remand the case for resentencing or, in appropriate cases, allow withdrawal of the defendant's plea. *Louis v. United States*, 862 A.2d 925, 2004 D.C. App. LEXIS 633 (2004).

When reviewing a trial court's denial of a motion to withdraw a guilty plea based on the alleged breach of the plea agreement, the appellate court interprets the terms of the plea agreement de novo and reviews the trial court's factual findings regarding alleged breaches of the plea agreement for clear error. *Louis v. United States*, 862 A.2d 925, 2004 D.C. App. LEXIS 633 (2004).

Record did not support defendant's claim, in moving to withdraw guilty plea to nine offenses for which he received total sentence of 56 years to life imprisonment, that government violated plea agreement by failing to recommend a sentence of 15 to 45 years' imprisonment; in course of outlining new plea offer accepted by defendant, both prosecutor and trial court made clear that government was making no promises as to the sentences that the court would impose, and court itself made absolutely clear that it alone would decide what the sentences would be for the various offenses. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Although the court, not the defendant, chooses the remedy when the government

breaches a plea agreement, the defendant's preference is accorded considerable, if not controlling, weight inasmuch as the fundamental rights flouted by a prosecutor's breach of a plea bargain are those of the defendant, not of the government. *Royce v. United States*, 772 A.2d 837, 2001 D.C. App. LEXIS 115 (2001).

If the government's promise in support of a plea agreement cannot be fulfilled, and if the government's subsequent deviation from its promise is material, then the waiver of constitutional rights that a guilty plea represents is invalidated and cannot be enforced. *Royce v. United States*, 772 A.2d 837, 2001 D.C. App. LEXIS 115 (2001).

Government has duty to fulfill its promises in plea bargain. *White v. United States*, 425 A.2d 616, 1980 D.C. App. LEXIS 421 (1980).

Government must meet standard of strict compliance with its plea bargaining agreement, and court will construe any ambiguity against the government. *White v. United States*, 425 A.2d 616, 1980 D.C. App. LEXIS 421 (1980).

Prosecutor's statement that Government had same concern as court that drug rehabilitation program for defendant would fail implied that, but for plea arrangement, Government would have recommended period of incarceration, and Government, by such conduct, broke its agreement not to oppose substantial suspended sentence and residential drug program for defendant, in exchange for his agreement to plead guilty to charges of second-degree burglary and forgery. D.C. Code §§ 22-1401, 22-1801(b). *White v. United States*, 425 A.2d 616, 1980 D.C. App. LEXIS 421 (1980).

Government's breach of plea agreement as to sentencing may be remedied either by order and resentencing by different judge or, when appropriate, by allowing defendant to withdraw plea. *White v. United States*, 425 A.2d 616, 1980 D.C. App. LEXIS 421 (1980).

— Factual support, pleas.

In order for a guilty plea to have a sufficient factual basis, the trial court must determine that the conduct which the defendant admits constitutes the offense charged and that the government has evidence from which a reasonable juror could conclude that the defendant was guilty as charged. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Sufficient factual basis existed for trial court's accepting guilty plea to first-degree sexual abuse, entered after defendant heard trial testimony of victim; victim's testimony would be sufficient by itself to convict, and defendant stated during the plea colloquy that he knew the victim was not lying and that he agreed with her testimony. *Kyle v. United States*, 759

A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Sufficient factual basis existed for trial court's accepting guilty plea to kidnapping, though defendant claimed to not remember incident because of voluntary intoxication, which could be a defense to the offense; defendant initiated the plea discussions after his memory was refreshed by the victim's testimony, defendant stated during the plea colloquy that he knew the victim was not lying and that he agreed with her testimony, and defendant was informed that specific intent was required for a conviction of kidnapping. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Defendant's express acknowledgement that she shook infant victim, her implicit admission that she knew infant's head was hitting the wall as she shook it, and her acknowledgement that these actions caused infant's death were sufficient, in absence of any justification or excuse, to establish factual basis to support guilty plea to voluntary manslaughter, even if defendant lacked actual intent to kill or injure infant. *Johnson v. United States*, 631 A.2d 871, 1993 D.C. App. LEXIS 225 (1993).

Court has duty to be indulgent of pro se pleadings. *United States v. Hawkins*, 110 WLR 1577 (Super. Ct.).

—Hearing, pleas.

While there is a presumption that the trial court should hold a hearing prior to deciding a motion for postconviction relief, no hearing is required where the motion and files and records of the case conclusively show that the defendant is entitled to no relief, or where defendant's motion consists of vague and conclusory allegations, palpably incredible claims, or allegations that would merit no relief even if true. *Cade v. United States*, 898 A.2d 349, 2006 D.C. App. LEXIS 209 (2006).

The trial court may deny a motion to vacate sentence without a hearing when defendant presents or proffers no new evidence to support his motion. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

Evidentiary hearing was required on defendant's motion to set aside his guilty plea to offense of manslaughter while armed on the ground of ineffective assistance of counsel; if defendant's factual allegations were true, counsel's performance was constitutionally deficient, defendant's allegations were neither "vague and conclusory" nor "palpably incredi-

ble," and defendant's allegations were not refuted by existing record, as they might have been had a tape or transcript of his guilty plea hearing been preserved. *Hilliard v. United States*, 879 A.2d 669, 2005 D.C. App. LEXIS 384 (2005).

Evidentiary hearing was required on defendant's claim in his motion to vacate, set aside, or correct sentence that defense counsel was ineffective in failing to advise him to maintain his initial guilty plea in prosecution for armed robbery and other offenses, even though counsel's affidavit stated that defendant consistently maintained his position that he was not going to plead guilty but wanted to go to trial; affidavit was silent on how counsel advised defendant prior to successful withdrawal of guilty plea, defendant claimed that counsel did not provide such advice, and question of prejudice from counsel's alleged failure to give such advice was unresolved. *Joseph v. United States*, 878 A.2d 1204, 2005 D.C. App. LEXIS 382 (2005).

Defendant was not entitled to evidentiary hearing on postsentencing motion to withdraw guilty pleas to second-degree burglary and aggravated assault; defendant's claims of ineffective assistance of counsel were vague and conclusory, and failed to assert how trial counsel was ineffective and otherwise warranted no relief. U.S. Const. Amend. 6; D.C. Code § 22-504.1, 22-1801(b), 23-110(c); Criminal Rule 23(e). *Southall v. United States*, 716 A.2d 183, 1998 D.C. App. LEXIS 127 (1998).

Trial court committed no error in denying defendant's postsentence motion to withdraw his guilty plea, made pursuant to statute governing vacation of sentence, without a hearing on his competency to enter plea, where defendant's motion did not raise any new factual issues requiring a hearing. D.C. Code 1981, § 23-110; Criminal Rule 32(e). *Johnson v. United States*, 633 A.2d 828, 1993 D.C. App. LEXIS 287 (1993).

Trial judge presiding over defendant's motion to vacate sentence and withdraw guilty plea should have held evidentiary hearing as to whether defendant acted in self-defense when he shot victim; self-defense claim stated in motion was not a "one line statement" as trial court found, and sentencing transcript revealed that when defendant and his attorney apparently had attempted to explain at sentencing that defendant had self-defense claim, trial judge cut them off. D.C. Code 1981, § 23-110. *Johnson v. United States*, 597 A.2d 917, 1991 D.C. App. LEXIS 276 (1991).

There is no bar to trial court, if so disposed, granting hearing with respect to motion to vacate sentence and withdraw guilty plea. D.C. Code 1981, § 23-110. *Johnson v. United States*, 597 A.2d 917, 1991 D.C. App. LEXIS 276 (1991).

Defendant's motion to withdraw guilty plea should not have been denied without hearing; defendant alleged her counsel had assured her she would qualify as addict under addict exception to Uniform Controlled Substances Act, for sentencing purposes, record supported those claims, defendant was not eligible for sentencing under the addict exception, and Government contributed to defense counsel's apparent misconception that addict exception might apply by agreeing to give up the right to contest evidence that defendant was qualified under the addict exception. D.C. Code 1981, §§ 23-110, 33-541(c)(2). *Gaston v. United States*, 535 A.2d 893, 1988 D.C. App. LEXIS 3 (1988).

Where motions, files and records in proceedings on motion to vacate guilty plea and sentence, based on allegation that defendant had been deprived of effective assistance of counsel, failed effectively to rebut defendant's allegations of violation of Sixth Amendment, it was error to deny motion without affording hearing. D.C. Code §§ 22-3204, 23-110; 18 U.S.C. § 2255; U.S. Const. Amends. 4, 6. *Gibson v. United States*, 388 A.2d 1214, 1978 D.C. App. LEXIS 476 (1978).

— In general.

Where a defendant pleads guilty to a crime without having been informed of the crime's elements, standard for judging the validity of guilty pleas is not met and the plea is invalid. *Hilliard v. United States*, 879 A.2d 669, 2005 D.C. App. LEXIS 384 (2005).

Appellate court construes any ambiguity in a plea agreement against the government. *Louis v. United States*, 862 A.2d 925, 2004 D.C. App. LEXIS 633 (2004).

Guilty plea to first-degree theft, rather than first-degree burglary, with respect to one charged incident did not amount to a constructive amendment of indictment, but rather an amendment of government's plea offer, where charge to which defendant was allowed to plead guilty was already contained in indictment. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Evidence supported finding that defendant's guilty plea was knowing and voluntary, even though defendant's plea agreement with the State was arranged after the prosecutor had made his opening statement at trial; during a colloquy with the court defendant stated that he was knowingly and voluntarily pleading guilty, that he was satisfied with the services of his attorney, that he had had enough time to think about his decision to plead guilty, and that he understood the charges to which he was pleading guilty. *Byrd v. United States*, 801 A.2d 28, 2002 D.C. App. LEXIS 304 (2002).

Due process of law demands that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled; if the promise cannot be fulfilled, and the deviation is material, the waiver of constitutional rights that a guilty plea represents is invalidated and cannot be enforced. *Byrd v. United States*, 801 A.2d 28, 2002 D.C. App. LEXIS 304 (2002).

Neither defendant's attorney nor the court was required to inform him of the potential collateral consequence that his conviction could be used to enhance a later sentence should he ever be convicted of another crime. *Thomas v. United States*, 766 A.2d 50, 2001 D.C. App. LEXIS 21 (2001).

Post-sentence attacks on guilty pleas are subject to the "manifest injustice" standard. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

In considering the length of the delay between the entry of a pre-sentence guilty plea and a motion to withdraw, as factor in determining whether the motion should be granted, the court should consider whether the government would have been prejudiced by withdrawal of the plea at the time of the motion to withdraw. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Given length and complexity of original eight-count plea offer and last minute revisions at end of plea hearing involving three significant changes in original plea bargain, arrived at in hasty discussion between prosecutor and defense counsel, court's colloquy with defendant where court informed defendant about substance of revisions, but never discussed effect of revisions on original plea package, court had outlined to defendant at beginning of hearing, was insufficient to fulfill requirements of applicable criminal rule and due process. Criminal Rule 11; U.S. Const. Amends. 5, 14. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

Fact that defendant pled guilty to revised plea package, containing nine, instead of eight, charges, arrived at in hasty discussion between prosecutor and defense counsel at plea hearing and inadequately communicated to defendant, prompted Court of Appeals to suggest remedy that would alleviate prejudice of manifest injustice, afford due process to defendant and at same time give government option of conserving both prosecutorial and judicial resources; Court of Appeals would allow government to petition court to vacate defendant's conviction

on additional ninth count and defendant's convictions on remaining eight counts would stand or would allow defendant's guilty pleas to be withdrawn and his convictions and sentence on all nine counts vacated. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

Defendant was prejudiced by fact that he was not adequately informed that original plea package had been changed to include nine rather than eight offenses and that additional offense would increase his possible punishment by 5 to 30 years; fact that defendant's total sentence for all nine counts amounted to less than statutory maximum allowable under original eight-count agreement did not remedy defects in plea proceeding. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

Defendant's guilty plea on contempt charge did not act as waiver of defendant's challenge to legality of sentence he received on the charge. D.C. Code 1981, § 23-1329(c). *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

Guilty plea in open court after full discussion of defendant's rights, terms of plea, its voluntary nature and discretion of judge is not totally immune from collateral attack; however, solemn declarations in open court carry strong presumption of verity. *Gregg v. United States*, 395 A.2d 36, 1978 D.C. App. LEXIS 355 (1978).

Record supported finding that assumedly erroneous advice of counsel that a plea and prompt sentencing before defendant's 22nd birthday were necessary for Federal Youth Corrections Act eligibility was an insignificant factor in defendant's decision to plead guilty to first-degree murder. D.C. Code § 23-110; 18 U.S.C. § 5005 et seq. *Bailey v. United States*, 385 A.2d 32, 1978 D.C. App. LEXIS 460 (1978), writ of certiorari denied by 439 U.S. 871, 99 S. Ct. 203, 58 L. Ed. 2d 183, 1978 U.S. LEXIS 3176 (1978).

A voluntary and intelligent guilty plea normally prevents a defendant from making a collateral attack on his sentence at a later date. *United States v. Hawkins*, 110 WLR 1577 (Super. Ct. 1982).

Pursuant to Super. Ct. Crim. R. 32(e), a motion to withdraw a guilty plea made after the sentence has been imposed, is to be granted only to prevent "manifest injustice," and the same standard applies to a motion to vacate a sentence made under this section. *United States v. Shaw*, 114 WLR 1389 (Super. Ct. 1986).

— Reservation of grounds for review, pleas.

Issue of competency of prison inmate to enter guilty plea, raised in inmate's second motion to vacate sentence, was procedurally barred, as

inmate had failed to raise it in his first motion to vacate sentence, and, in his second motion, he offered no excuse for his failure to include claim in his first motion, nor did he do so in his brief on appeal. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

Defendant was not precluded from appealing denial of motion to suppress evidence for failure to execute a written reservation specifying the pretrial ruling as part of his conditional guilty plea to possession of a controlled substance, where all parties had agreed at the plea proceeding that the plea was conditional and that the suppression issue was the only issue reserved. *Casey v. United States*, 788 A.2d 155, 2002 D.C. App. LEXIS 1 (2002).

The purpose of enforcing the requirement that a reservation of right to appeal a specified ruling as part of a conditional guilty plea must be in writing is to avoid uncertainty about the pretrial ruling reserved for appeal and to assure that all parties and the court had agreed. *Casey v. United States*, 788 A.2d 155, 2002 D.C. App. LEXIS 1 (2002).

Challenge to validity of guilty plea could not be made for first time on direct appeal from conviction, there being no motion in trial court either to withdraw plea or to vacate the sentence; hence, only issues that could be raised on appeal were exercise of jurisdiction by the trial court and legality of sentence, an issue raised in notice of appeal. D.C. Code SCR, Criminal Rules 11(d), 32(e); D.C. Code § 23-110. *Lorimer v. United States*, 425 A.2d 1306, 1981 D.C. App. LEXIS 216 (1981).

— Voluntarily and knowingly made, pleas.

A guilty plea is valid only if it is entered voluntarily, knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences. *Hilliard v. United States*, 879 A.2d 669, 2005 D.C. App. LEXIS 384 (2005).

The consequences of a plea are direct and must be communicated to defendant when they have a definite and immediate impact on the range of defendant's punishment; unless a consequence of a guilty plea is absolutely part and parcel to the sentence itself, it is "collateral" for purposes of general rule that neither the trial judge nor defense counsel is required to explain the collateral consequences of a guilty plea to the defendant. *Ramos v. United States*, 840 A.2d 1292, 2004 D.C. App. LEXIS 11 (2004).

In general, neither the trial judge nor defense counsel is required to explain the collateral consequences of a guilty plea to the defendant. *Ramos v. United States*, 840 A.2d 1292, 2004 D.C. App. LEXIS 11 (2004).

Revocation of probation in another state was collateral consequence of guilty plea to a simple assault on girlfriend, and, thus, defense attorneys were not required to advise defendant of the possibility of revocation and did not render deficient performance. *Ramos v. United States*, 840 A.2d 1292, 2004 D.C. App. LEXIS 11 (2004).

Low I.Q., standing alone, will not render an otherwise voluntary and knowing confession inadmissible. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

In general, neither the trial judge nor defense counsel is required to explain the collateral consequences of a guilty plea to the defendant. *Goodall v. United States*, 759 A.2d 1077, 2000 D.C. App. LEXIS 273 (2000).

The consequences of a plea are "direct consequences," which must be explained to defendant in accepting plea, when they have a definite and immediate impact on the range of defendant's punishment; those aspects which are "automatic" upon sentencing and "absolutely part and parcel to the sentence itself" are considered direct consequences of a guilty plea. *Goodall v. United States*, 759 A.2d 1077, 2000 D.C. App. LEXIS 273 (2000).

Parole eligibility is not part of "direct consequences" of a plea, which must be explained to defendant before his plea is accepted; parole is neither definite nor immediate, and parole eligibility does not affect the range of possible punishment. *Goodall v. United States*, 759 A.2d 1077, 2000 D.C. App. LEXIS 273 (2000).

Defendant's guilty pleas to first-degree sexual abuse and kidnapping were knowingly and voluntarily made, where defendant initiated the plea negotiations after being moved by the victim's trial testimony, defendant told the court he had sufficient opportunity to discuss an insanity defense with his lawyer and that he did not intend to pursue it, and defendant cogently told the court that his reason for the pleas was that he did not want to put the victim through any more humiliation. *Goodall v. United States*, 759 A.2d 1077, 2000 D.C. App. LEXIS 273 (2000).

Defendant's guilty pleas to second-degree burglary and aggravated assault were not coerced; trial court took steps to assure that defendant understood his rights, terms of agreement, factual basis for plea, and that plea was voluntarily entered. D.C. Code 1981, § 22-504.1, 22-1801(b), 23-110. *Southall v. United States*, 716 A.2d 183, 1998 D.C. App. LEXIS 127 (1998).

Determination of whether guilty plea was voluntary as a matter of due process requires examination of entire record and analysis of totality of circumstances surrounding plea. U.S. Const. Amends. 5, 14. *Johnson v. United States*, 631 A.2d 871, 1993 D.C. App. LEXIS 225 (1993).

Surrounding circumstances relevant to inquiry concerning voluntariness of plea include complexity of charges, personal characteristics of defendant, defendant's familiarity with criminal justice system and factual basis proffered to support court's acceptance of plea. *Johnson v. United States*, 631 A.2d 871, 1993 D.C. App. LEXIS 225 (1993).

Trial judge had substantial basis for determining that defendant understood nature of voluntary manslaughter plea, where defendant was fully apprised of nature of offense and elements constituting both voluntary and involuntary manslaughter at plea proceeding. *Johnson v. United States*, 631 A.2d 871, 1993 D.C. App. LEXIS 225 (1993).

One of direct consequences of which defendant must be informed when entering plea is full range of possible punishment, including both mandatory minimum and maximum possible sentence to which defendant may be subjected as result of guilty plea. Criminal Rules 11, 11(c)(1). *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

Defendant did not intelligently and knowingly plead to additional ninth count of revised plea package; neither defense counsel nor trial court adequately informed defendant that under new plea package he was pleading guilty to nine counts, instead of original eight counts, and that additional ninth count carried with it additional mandatory prison term, thereby increasing overall mandatory minimum and maximum possible sentence for his crimes. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

Where plea package containing eight offenses was hastily revised at plea hearing to include additional ninth count, trial court should have advised defendant that overall package had been changed to include nine rather than eight offenses and that additional offense would increase his possible punishment by 5 to 30 years; such advice was critical to correct prosecutor's misleading statement on record, un rebutted by defense counsel, that revisions to original plea offer were slight. Criminal Rule 11. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

When defendant pled guilty to revised plea package containing nine offenses, instead of eight, defendant's rights were not violated, nor did he suffer prejudice, with regard to his guilty pleas to original eight counts in revised plea package; number and types of offenses and range of potential punishment with respect to these eight counts were same under revised plea as under original offer and defendant engaged in extensive colloquy with trial court in which he admitted committing several of charged offenses and recited numerous background facts and circumstances. *Eldridge v.*

United States, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

Defendant who entered guilty pleas was not entitled to have matter reopened on his competency to enter guilty pleas while on 100 milligrams of drug prescribed by his physician, where defendant failed to call physician to testify at hearing and trial court had benefit of physician's written report. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

Trial court properly denied defendant's motion to vacate his sentence and withdraw his guilty plea, which motion was based on grounds that defendant did not understand nature of mandatory minimum sentence he might receive, where record showed that defendant was advised of mandatory minimum sentence and there was no justification in motion papers why the repeated explanations did not fully apprise defendant or why any alleged confusion did not lead him to raise issue earlier. D.C. Code 1981, § 23-110; Criminal Rule 32(e). *Johnson v. United States*, 597 A.2d 917, 1991 D.C. App. LEXIS 276 (1991).

Under prior law, determination of whether defendant who had entered guilty plea without full knowledge of risk of deportation should be permitted to withdraw his plea was committed to sound discretion of trial court. D.C. Code 1981, §§ 16-713, 16-713(a, b). *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

Under prior law, Rule 11 did not require trial court to inform defendant of potential collateral consequences of his plea, including possibility of deportation, at proceeding for entry of guilty plea. D.C. Code 1981, § 16-713(b); Civil Rule 11. *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

Interests of justice did not require that guilty plea be vacated due to defendant's failure to be informed of possibility of deportation, where defendant failed to raise issue despite making numerous collateral attacks on his sentence in seven years since he entered plea and five years since receiving order to show cause why he should not be deported; such lengthy delay in raising issue undermined defendant's belated claim that he would not have entered his guilty plea had he only known of potential for his deportation. D.C. Code 1981, §§ 16-713, 16-713(b); Civil Rule 11; Criminal Rule 32(e). *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

Trial judge must conduct inquiry to determine whether guilty plea is voluntary and intelligent and similar colloquy must take place before defendant waives right to counsel. U.S. Const. Amend. 6. *Boyd v. United States*, 586 A.2d 670, 1991 D.C. App. LEXIS 4 (1991).

Failure to satisfy requirements of rule that, before court accepts guilty plea, it make sure

that defendant is aware of the consequences of the plea may result in setting aside the guilty plea. D.C. Code SCR, Criminal Rule 11. *Bettis v. United States*, 325 A.2d 190, 1974 D.C. App. LEXIS 270 (1974).

— Withdrawal of pleas.

Post-sentence withdrawal of guilty plea to second-degree murder was not necessary to correct manifest injustice based on defendant's claim that plea colloquy indicated that he wanted both to plead guilty and to go to trial and plead insanity and self defense, and therefore, was confused and did not understand significance and consequences of plea; during most of plea proceeding, defendant appropriately responded to trial court's questions, defendant took exception to trial court's summary of his statement of facts, indicating he was mentally engaged in proceedings, mental health experts had previously testified at competency hearing that defendant was capable of malingering, and trial court took special care with proceedings, giving defendant numerous opportunities to consult with counsel. *Wallace v. United States*, 936 A.2d 757, 2007 D.C. App. LEXIS 569 (2007), writ of certiorari denied by 552 U.S. 1310, 128 S. Ct. 1870, 170 L. Ed. 2d 744, 2008 U.S. LEXIS 3154, 76 U.S.L.W. 3554 (2008).

When considering a motion to vacate sentence which is filed after a defendant has pleaded guilty and been sentenced, the motion is properly treated as a motion to withdraw the guilty plea. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

The Court of Appeals may overturn the trial court's denial of defendant's motion to withdraw his guilty plea only for an abuse of discretion. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

There must be a showing of prejudice in order to warrant a finding of "manifest injustice" sufficient to permit a defendant to withdraw a guilty plea. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

Manifest injustice, as must be shown by a defendant who seeks to withdraw guilty plea after being sentenced, can take several forms; in the context of a plea agreement, it may exist if the defendant was coerced into pleading guilty or did not knowingly plead guilty, or if the government failed to comply with the terms of the agreement. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

To move successfully for postsentence withdrawal of guilty plea, defendant must demon-

strate that permitting plea to stand would result in "manifest injustice." *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

A defendant may successfully move to withdraw a guilty plea by establishing that either (1) there was a fatal defect in plea proceeding when the guilty plea was taken, or (2) justice demands withdrawal under the circumstances of the case. *Abbott v. United States*, 871 A.2d 514, 2005 D.C. App. LEXIS 146 (2005).

Court of Appeals would take judicial notice that mailing of letters containing anthrax to public officials in District of Columbia resulted in delayed delivery of other mail, and therefore would give defendant the benefit of his assertion, for purposes of determining whether he timely sought to withdraw his negotiated guilty plea, that his letter seeking to withdraw the plea had been mailed about three weeks after he entered the plea, though letter was received by judge more than six weeks after entry of plea. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

Motions to withdraw a guilty plea that are made promptly after the entry of the plea are regarded with particular favor because a swift change of heart is itself a strong indication that the plea was entered in haste and confusion. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

In deciding whether a credible claim of legal innocence has been made, which would support the withdrawal of guilty plea before sentencing, an assertion of legal innocence is to be weighed against the proffer made by the government in support of guilty plea, defendant's sworn adoption of facts contained in that proffer, and defendant's own sworn admissions made when plea was entered. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

When a criminal defendant moves to withdraw his guilty plea, he must set forth some facts, which when accepted as true, make out some legally cognizable defense to the charges, in order to effectively deny culpability; the mere assertion of a defense is insufficient to allow withdrawal of a plea, and withdrawal will not be permitted where the defense, even if legally cognizable, is unsupported by any other evidence. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct.

2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

Although a claim of legal innocence is an important factor in the court's determination of whether it will allow a defendant to withdraw a guilty plea before sentencing, a claim of legal innocence is not dispositive. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

The trial court's decision to deny a presentencing motion to withdraw guilty plea will not be reversed unless it is shown that the trial court's discretion has been abused. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

Withdrawal of a plea is not a matter of right, and the determination of whether the defendant has met the "fair and just" standard for withdrawing the guilty plea before sentencing is left to the trial court's sound discretion. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

Three factors are relevant to the inquiry whether fairness and justice warrant presentencing withdrawal of guilty plea: (1) whether defendant has asserted his legal innocence; (2) length of delay between entry of plea and expression of desire to withdraw it; and (3) whether defendant had full benefit of competent counsel at all relevant times. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

While motions to withdraw a guilty plea which are made after sentencing are subject to the "manifest injustice" standard, a motion to withdraw a guilty plea made before sentencing is regarded more leniently and is given favorable consideration if for any reason the granting of the privilege seems fair and just. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126 S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

In order to succeed on a motion to withdraw a guilty plea, a defendant must establish one of two separate and independent grounds: either that there was a fatal defect in the plea colloquy, or that justice demands withdrawal under the circumstances. *White v. United States*, 863 A.2d 839, 2004 D.C. App. LEXIS 697 (2004), writ of certiorari denied by 547 U.S. 1197, 126

S. Ct. 2883, 165 L. Ed. 2d 905, 2006 U.S. LEXIS 4616, 74 U.S.L.W. 3686 (2006).

Standard of review for a trial court's denial of a post-sentencing motion to withdraw a guilty plea is abuse of discretion. *Louis v. United States*, 862 A.2d 925, 2004 D.C. App. LEXIS 633 (2004).

An assertion of legal innocence is not a prerequisite to withdrawal of a guilty plea, but is one of many factors to be examined. *Butler v. United States*, 836 A.2d 570, 2003 D.C. App. LEXIS 693 (2003).

Manifest injustice, as must be shown by a defendant who seeks to withdraw guilty plea after being sentenced, can result from a fatal defect in the plea proceeding. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Appellate court will reverse the denial of a motion to withdraw guilty plea brought after sentencing only upon a showing of abuse of discretion by the trial court. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

A defendant who moves after sentencing to withdraw guilty plea involving a constructive amendment must show he was prejudiced in order to establish plain error. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

There are two ways in which an accused may successfully move to withdraw a guilty plea, one of which is to establish a fatal defect in the proceeding at which the guilty plea was entered, the other to show that justice demands withdrawal in the circumstances of the individual case; when a motion to withdraw is made prior to sentencing the motion should be granted if for any reason the granting of the privilege seems fair and just. *Byrd v. United States*, 801 A.2d 28, 2002 D.C. App. LEXIS 304 (2002).

In determining whether withdrawal of a plea agreement would be fair and just, the court applies three factors: whether the defendant has asserted his or her legal innocence, the length of delay between entry of the guilty plea and the defendant's expression of a desire to withdraw it, and whether the defendant had the benefit of competent counsel at all relevant times. *Byrd v. United States*, 801 A.2d 28, 2002 D.C. App. LEXIS 304 (2002).

Whether a defendant has met the fair and just standard for withdrawal of a plea agreement is left to the sound discretion of the trial court, and the court's decision will not be disturbed absent an abuse of that discretion. *Byrd*

v. United States, 801 A.2d 28, 2002 D.C. App. LEXIS 304 (2002).

Defendant was not entitled to the withdrawal of his guilty plea to murder and other crimes; defendant's claim of innocence was unsubstantiated and was contradicted by testimony and DNA evidence, defendant did not request withdrawal of his guilty plea until 26 days after he had entered his plea, and defendant failed to offer any factual basis in support of his claim of ineffective assistance of counsel. *Byrd v. United States*, 801 A.2d 28, 2002 D.C. App. LEXIS 304 (2002).

The determination of whether to allow withdrawal of a guilty plea is left to the sound discretion of the trial court, and reversal will be required only upon a showing of abuse of discretion. *Maske v. United States*, 785 A.2d 687, 2001 D.C. App. LEXIS 244 (2001).

A defendant may withdraw a guilty plea if he establishes that justice demands withdrawal under the circumstances of the particular case. *Maske v. United States*, 785 A.2d 687, 2001 D.C. App. LEXIS 244 (2001).

Allowing defendant to withdraw guilty plea to murder was not in the interest of justice; while defendant asserted his innocence, he made no attempt to offer either a defense or evidence to suggest that someone else committed the crime, government made a sufficient proffer that defendant was the perpetrator, defendant waited two months before disclaiming responsibility, and defendant's counsel provided effective assistance. *Maske v. United States*, 785 A.2d 687, 2001 D.C. App. LEXIS 244 (2001).

A swift change of heart is a strong indication that a guilty plea was entered in haste and confusion, and withdrawal motions that are promptly made are regarded with particular favor. *Maske v. United States*, 785 A.2d 687, 2001 D.C. App. LEXIS 244 (2001).

More than a pro forma claim of innocence is required to justify withdrawing a guilty plea. *Maske v. United States*, 785 A.2d 687, 2001 D.C. App. LEXIS 244 (2001).

A prisoner who had fully served a Superior Court sentence and was serving a federal sentence was not "in custody" and, therefore, could not move to vacate his sentence, even if the sentence was used to enhance a sentence for a subsequent conviction; to meet the in-custody requirement of statute which permits a prisoner in custody to move to vacate his sentence, the prisoner had to be currently serving or to be detained upon a sentence imposed by the Superior Court. *Thomas v. United States*, 766 A.2d 50, 2001 D.C. App. LEXIS 21 (2001).

In order to succeed on a motion to withdraw a guilty plea, a defendant must establish one of two separate and independent grounds: either that there was a fatal defect in the plea colloquy, or that justice demanded withdrawal un-

der the circumstances of defendant's case. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

A motion to withdraw a guilty plea made before sentence should be given favorable consideration if for any reason the granting of the privilege seems fair and just. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

An assertion of legal innocence is a necessary prerequisite, but is not sufficient alone to require a withdrawal of a guilty plea. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Defendant's motion to withdraw pre-sentence guilty pleas to first-degree sexual abuse and kidnapping should not have been granted on ground it would be "fair and just," where defendant never asserted his legal innocence, government would have been prejudiced if the motion were granted, in that it was presented in the middle of trial, and defendant received effective assistance of counsel. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Once plea judge had erroneously denied presentence motion to withdraw guilty pleas without hearing, motions judge considering subsequent motion to vacate guilty pleas and sentence should have treated motion as presentence motion to withdraw guilty pleas and applied presentence standard, rather than postsentence standard requiring showing of prejudice for claim of ineffective assistance of counsel. *U.S. Const. Amend. 6*; *D.C. Code 1981, § 23-110*; *Criminal Rule 32(e)*. *Pettiford v. United States*, 700 A.2d 207, 1997 D.C. App. LEXIS 209 (1997).

Guilty plea may be withdrawn after sentencing only if defendant affirmatively establishes that trial court's acceptance of her plea was manifestly unjust, and that plea proceeding was fundamentally flawed such that there was complete miscarriage of justice. *Criminal Rule 32(e)*. *Johnson v. United States*, 631 A.2d 871, 1993 D.C. App. LEXIS 225 (1993).

Given gravity of constitutional rights that are waived when defendant pleads guilty, Court of Appeals will rigorously scrutinize trial court proceedings at which defendant enters plea and later seeks to withdraw it. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

To prevail on motion to vacate plea of guilty, movant must establish either that Rule 11

proceeding was substantially defective or that interests of justice require plea to be vacated. *D.C. Code 1981, § 16-713(b)*; *Civil Rule 11*. *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

Determination of whether interests of justice require that guilty plea be vacated subsequent to sentencing is governed by manifest injustice standard of Superior Court Criminal Rule 32(e). *D.C. Code 1981, § 16-713*; *Criminal Rule 32(e)*. *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

Whether movant invokes rule permitting motion to withdraw guilty plea or statute providing for remedies on motion attacking sentence as vehicle for postsentencing motion to withdraw guilty plea, standard remains to correct manifest injustice. *Criminal Rule 32(e)*; *D.C. Code 1981, § 23-110*. *Goodall v. United States*, 584 A.2d 560, 1990 D.C. App. LEXIS 321 (1990).

Manifest injustice standard will be applied to a request to withdraw a not guilty by reason of insanity plea, thus same factors are to be considered in connection with a collateral attack on a not guilty by reason of insanity plea as are considered in connection with a motion to withdraw a guilty plea. *Criminal Rule 32(d, e)*; *D.C. Code 1981, § 23-110*. *Morrison v. United States*, 579 A.2d 686, 1990 D.C. App. LEXIS 202 (1990).

Defendant was not entitled to withdraw guilty plea that was allegedly entered while defendant was taking pain medication and after defense attorney allegedly persuaded defendant to plead guilty; guilty plea court made careful inquiry before accepting plea and specifically advised defendant that plea was entirely up to him; defense attorney testified that he did not tell defendant that he would receive life imprisonment if he did not plead guilty; and he testified that he told defendant about plea being up to him and that he discussed facts of case with defendant and was satisfied of factual basis for plea. *D.C. Code 1981, § 23-110*. *Doughty v. United States*, 574 A.2d 1342, 1990 D.C. App. LEXIS 125 (1990).

Most appropriate procedure for postsentence relief from guilty plea is motion to withdraw plea to "correct manifest injustice"; alternatively, motion to vacate sentence may be made. *D.C. Code 1981, § 23-110*; *Criminal Rule 32(e)*. *McClurkin v. United States*, 472 A.2d 1348, 1984 D.C. App. LEXIS 317 (1984), writ of certiorari denied by 469 U.S. 838, 105 S. Ct. 136, 83 L. Ed. 2d 76, 1984 U.S. LEXIS 3334, 53 U.S.L.W. 3237 (1984).

Where defendant had already been sentenced when he moved for leave to withdraw his plea of guilty and where defendant did not allege that he was innocent but merely that his arrest was based on suspicion and hearsay information of a single witness, trial court did

not commit manifest injustice by denying the motion to withdraw the plea. D.C. Code SCR, Criminal Rule 32(e). *Bettis v. United States*, 325 A.2d 190, 1974 D.C. App. LEXIS 270 (1974).

In considering a motion for withdrawal of a plea of guilty, failure of defendant to allege that he is innocent of the charge to which he pled guilty is a factor which is not only important, but may be conclusive. D.C. Code SCR, Criminal Rule 32(e). *Bettis v. United States*, 325 A.2d 190, 1974 D.C. App. LEXIS 270 (1974).

Prearrest delay.

In the absence of severe prejudice, pre-arrest delay will not support a due process claim when the government's actions have been negligent, but not reckless or intentional. *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct. 2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

To prevail on his claim that a pre-arrest delay violated his due process rights under the Fifth Amendment, defendant must establish that he was actually prejudiced as a result of an unjustified delay by the government. *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct. 2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

Whether case is strong or weak has no relevance to determining whether prearrest delay violated due process; although complex cases may occasion more delay than simple ones, that notion does not permit evaluation of case in terms of witnesses from one side coming from a seedy culture and from different stratum on the other side in that, were the law otherwise, due process delay or speedy trial claim could be rejected if prosecution were strong and based on testimony of witnesses of great character and defense based on testimony of addict, felons and liars. (Per Nebeker, J., with one Judge concurring.) U.S. Const. Amends. 5, 6. *United States v. Donaldson*, 451 A.2d 51, 1982 D.C. App. LEXIS 439 (1982), writ of certiorari denied by 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124, 1983 U.S. LEXIS 1351, 52 U.S.L.W. 3264 (1983).

Good faith prearrest delays do not deprive accused of due process. (Per Nebeker, J., with one Judge concurring.) U.S. Const. Amend. 5. *United States v. Donaldson*, 451 A.2d 51, 1982 D.C. App. LEXIS 439 (1982), writ of certiorari denied by 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124, 1983 U.S. LEXIS 1351, 52 U.S.L.W. 3264 (1983).

Investigative delays do not deprive accused of due process even if his defense might be somewhat prejudiced by lapse of time. U.S.

Const. Amend. 5. *United States v. Donaldson*, 451 A.2d 51, 1982 D.C. App. LEXIS 439 (1982), writ of certiorari denied by 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124, 1983 U.S. LEXIS 1351, 52 U.S.L.W. 3264 (1983).

Any loss in memory of witness who would have corroborated defendant's alibi did not prejudice alibi defense sufficiently to warrant granting remedy of dismissal on grounds that prearrest delay violated defendant's due process rights. U.S. Const. Amends. 5, 6. *United States v. Donaldson*, 451 A.2d 51, 1982 D.C. App. LEXIS 439 (1982), writ of certiorari denied by 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124, 1983 U.S. LEXIS 1351, 52 U.S.L.W. 3264 (1983).

Absent showing of substantial or severe prejudice, prearrest delay which satisfies due process cannot be amalgamated to later delays in order to base Fifth Amendment due process violation. U.S. Const. Amend. 5. *United States v. Donaldson*, 451 A.2d 51, 1982 D.C. App. LEXIS 439 (1982), writ of certiorari denied by 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124, 1983 U.S. LEXIS 1351, 52 U.S.L.W. 3264 (1983).

Defendant's allegation that 14-month prearrest delay enabled a minor witness to become a competent witness in criminal prosecution was insufficient to support a due process claim in that it was based on pure speculation, 14-month delay could easily have worked to defendant's advantage by causing child's memory to fade, and defendant made no claim that presentation of his own evidence was in any way impaired. D.C. Code §§ 22-2403, 22-3202, 22-3203; U.S. Const. Amend. 5. *Smith v. United States*, 414 A.2d 1189, 1980 D.C. App. LEXIS 290 (1980).

With possible exception of showing of severe prejudice to defendant from prearrest delay, such delay will not support a due process claim when Government's actions have been negligent, but not reckless or intentional. U.S. Const. Amend. 5. *Smith v. United States*, 414 A.2d 1189, 1980 D.C. App. LEXIS 290 (1980).

Even if defendant in criminal prosecution met threshold burden of showing prejudice to his defense as result of 14-month prearrest delay, reason for delay did not justify relief under Fifth Amendment where eight months of delay, during which time California authorities refused to surrender defendant to District of Columbia until he had served prison term on narcotics charge in California, was not in reckless disregard of defendant's rights or to gain tactical advantage for government, and six-month period of delay thereafter, during which time defendant was imprisoned in District of Columbia for parole violation and during which time police department was unaware defendant was in jurisdiction, could be characterized as negligence but did not rise to level of inten-

tional or reckless governmental delay. U.S. Const. Amend. 5. *Smith v. United States*, 414 A.2d 1189, 1980 D.C. App. LEXIS 290 (1980).

Prosecutorial conduct.

Trial judge, in allowing prosecutor to question defense witness about arrests or convictions of his family members for unrelated matters in an attempt to show his bias against government, did not commit plain error in murder prosecution; witness testified only that he saw third party and victim at murder scene an hour or so before it occurred, prosecutor's summation focused not on witness's credibility, but on fact that defendant could have been inside building when witness was outside, and witness was impeached with his own pending indictment, and thus, any error did not affect defendant's substantial rights. *Jones v. United States*, 946 A.2d 970, 2008 D.C. App. LEXIS 213 (2008).

Error regarding closing argument and rebuttal closing argument of prosecutor, which made improper emotional appeals to jury by referring to victim having been "tortured," by referring to the shooting as a "horrific inhumane crime" and a "horrific act against another human being," and by referring to victim ending up in "a cold grave," did not require reversal of defendant's conviction for first-degree premeditated murder; it was unlikely that jury's verdict was influenced, given strength of government's evidence, which included several witnesses' narratives that defendant shot victim at close range in the back, in cold blood, as part of feud between rival groups over drug turf, and given that trial court specifically instructed jury to disregard any opinions on the evidence expressed by the lawyers. *Tyree v. United States*, 942 A.2d 629, 2008 D.C. App. LEXIS 31 (2008), writ of certiorari denied by 556 U.S. 1130, 129 S. Ct. 1612, 173 L. Ed. 2d 1000, 2009 U.S. LEXIS 2077, 77 U.S.L.W. 3528 (2009).

Defense witness testified unequivocally that she was not present when defendant allegedly purchased one bag of cocaine for his own consumption and yet in her closing and rebuttal arguments, the prosecutor repeatedly asserted that defense witness had claimed she was present, and prosecutor's flat misstatements of witness's testimony were improper; whether or not the prosecutor acted in good faith, she had an obligation to know, and she should have known, that her description of witness's testimony was untrue. *Simmons v. United States*, 940 A.2d 1014, 2008 D.C. App. LEXIS 14 (2008).

If prosecutor's remarks are improper, the Court of Appeals must consider the gravity of the improper comments, their relation to guilt, the effect of any corrective action taken, and the strength of the government's case. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

When reviewing a claim of improper prosecutorial argument, the Court of Appeals must first determine whether the prosecutor's challenged comments were improper. *Najafi v. United States*, 886 A.2d 103, 2005 D.C. App. LEXIS 553 (2005).

In determining whether improper prosecutorial comments caused substantial prejudice, the Court of Appeals must consider: (1) gravity of impropriety; (2) its relationship to issue of guilt; (3) effect of any corrective action by trial judge; and (4) strength of government's case. *Najafi v. United States*, 886 A.2d 103, 2005 D.C. App. LEXIS 553 (2005).

Applicable test to determine whether improper prosecutorial comments caused substantial prejudice is whether the Court of Appeals can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judge was not substantially swayed by the error. *Najafi v. United States*, 886 A.2d 103, 2005 D.C. App. LEXIS 553 (2005).

Court of Appeals would review for plain error issue of whether prosecutor had improperly expressed his personal opinion by using the word "guarantee" during portion of his closing argument that focused on conflicting versions of whether vehicle's rearview mirror had been moved, as defendant did not raise any objection at trial to words prosecutor used, and objection he did raise focused specifically upon argument related to position of rear view mirror, in prosecution for involuntary manslaughter while armed and other offenses. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

When reviewing claims of improper prosecutorial argument, if defendant did not object to the argument, then the appellate court's review is for plain error. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

When reviewing claims of improper prosecutorial argument, the appellate court considers the gravity of the impropriety, its relationship to the issue of guilt, the effect of any corrective action by the trial judge, and the strength of the government's case. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

When reviewing claims of improper prosecutorial argument, if defendant has made a timely objection to the argument, then the

appellate court must determine whether the trial court's error, if any, in overruling the objection was harmless. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

When reviewing claims of improper prosecutorial argument, the appellate court determines first whether the challenged argument is improper. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

Where an objection was lodged at trial to a prosecutor's comment that was indeed improper, and where the trial court thus erred in overruling the objection, the Court of Appeals will reverse the conviction unless the defendant was not substantially prejudiced by the court's error. *McNeely v. United States*, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

When reviewing an allegation of improper prosecutorial argument, the Court of Appeals first determines whether any of the challenged comments were, in fact, improper; if so, the court must, viewing the remarks in context, consider the gravity of the impropriety, its relationship to the issue of guilt, the effect of any corrective action by the trial judge, and the strength of the government's case. *McNeely v. United States*, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

Where defense lodged an objection to challenged statements of prosecutor at trial, and they are found to be improper, an appellate court evaluates whether it can say with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Abdus-Price v. United States*, 873 A.2d 326, 2005 D.C. App. LEXIS 204 (2005).

In reviewing a charge of improper prosecutorial argument, an appellate court will first determine if challenged actions or comments were improper; if so, the court must, viewing the remarks in context, consider (1) the gravity of the impropriety, (2) its relationship to the issue of guilt, (3) the effect of any corrective action by the trial judge, and (4) the strength of the government's case. *Abdus-Price v. United States*, 873 A.2d 326, 2005 D.C. App. LEXIS 204 (2005).

It was improper for prosecutor, when cross-examining character witnesses presented by the defense, to ask each witness to assume hypothetically that defendant had committed the criminal acts alleged and to ask each witness whether that hypothesis would change witness' opinion expressed in direct testimony; guilt-assuming hypothetical question posed to

defense character witnesses by prosecutor was objectionable because its minimal probative value was substantially outweighed by the risk of unfair prejudice to the defendant. *McFerguson v. United States*, 870 A.2d 1199, 2005 D.C. App. LEXIS 142 (2005).

When there has been no objection at trial, reversal of a conviction based on improper prosecutorial argument is appropriate only in a particularly egregious case, when a miscarriage of justice would otherwise result. *Finch v. United States*, 867 A.2d 222, 2005 D.C. App. LEXIS 19 (2005), writ of certiorari denied by 544 U.S. 1055, 125 S. Ct. 2313, 161 L. Ed. 2d 1100, 2005 U.S. LEXIS 4294, 73 U.S.L.W. 3685 (2005).

If defendant failed to make a timely objection to the prosecutor's improper comments or the trial judge's ruling thereon, defendant must establish plain error in order to secure a reversal on the basis of claim of prosecutorial misconduct. *Finch v. United States*, 867 A.2d 222, 2005 D.C. App. LEXIS 19 (2005), writ of certiorari denied by 544 U.S. 1055, 125 S. Ct. 2313, 161 L. Ed. 2d 1100, 2005 U.S. LEXIS 4294, 73 U.S.L.W. 3685 (2005).

If an objection was preserved, the appellate court may not affirm the convictions unless it is satisfied that defendant did not suffer substantial prejudice from the prosecutor's improper comments. *Finch v. United States*, 867 A.2d 222, 2005 D.C. App. LEXIS 19 (2005), writ of certiorari denied by 544 U.S. 1055, 125 S. Ct. 2313, 161 L. Ed. 2d 1100, 2005 U.S. LEXIS 4294, 73 U.S.L.W. 3685 (2005).

For purposes of claim of prosecutorial misconduct, the appellate court, in determining whether the trial judge erred or abused his discretion in responding to prosecutor's improper comments, takes into consideration the context in which the comments were made, the gravity of the impropriety, its relationship to the issue of guilt, the effect of any corrective action taken by the judge, and the strength of the government's case. *Finch v. United States*, 867 A.2d 222, 2005 D.C. App. LEXIS 19 (2005), writ of certiorari denied by 544 U.S. 1055, 125 S. Ct. 2313, 161 L. Ed. 2d 1100, 2005 U.S. LEXIS 4294, 73 U.S.L.W. 3685 (2005).

In regard to a claim of prosecutorial misconduct, the appellate court starts by determining whether the challenged comments were, in fact, improper; if they were, the appellate court must determine whether the trial judge erred or abused his discretion in responding to them. *Finch v. United States*, 867 A.2d 222, 2005 D.C. App. LEXIS 19 (2005), writ of certiorari denied by 544 U.S. 1055, 125 S. Ct. 2313, 161 L. Ed. 2d 1100, 2005 U.S. LEXIS 4294, 73 U.S.L.W. 3685 (2005).

When the appellate court analyzes a claim of alleged prosecutorial misconduct, it must first determine whether the prosecutor's actions

were improper. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

To obtain reversal on appeal, appellant must establish that the alleged prosecutorial misconduct rose to the level of substantial prejudice, i.e., that the misconduct substantially swayed the judgment. *Brown v. United States*, 864 A.2d 996, 2005 D.C. App. LEXIS 2 (2005).

When analyzing a claim of prosecutorial overreaching for a comment prosecutor made during rebuttal closing argument, appellate court considers the gravity of the remark, its relationship to guilt, whether the court made corrective instructions, and the strength of the government's case. *Williams v. United States*, 859 A.2d 130, 2004 D.C. App. LEXIS 452 (2004).

When analyzing a claim of prosecutorial overreaching for a comment prosecutor made during rebuttal closing argument, if comments were improper, appellate court then determines whether substantial prejudice resulted; in order to make this determination, appellate court considers whether it can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Williams v. United States*, 859 A.2d 130, 2004 D.C. App. LEXIS 452 (2004).

When analyzing a claim of prosecutorial overreaching for a comment prosecutor made during rebuttal closing argument, appellate court must first consider whether the comments were improper. *Williams v. United States*, 859 A.2d 130, 2004 D.C. App. LEXIS 452 (2004).

To make an appropriate assessment of whether prosecutor's invited response, taken in context, unfairly prejudiced defendant, a reviewing court must not only weigh the impact of the prosecutor's remarks, but must also take into account defense counsel's opening salvo. *Woodall v. United States*, 842 A.2d 690, 2004 D.C. App. LEXIS 54 (2004), writ of certiorari denied by 543 U.S. 1155, 125 S. Ct. 1297, 161 L. Ed. 2d 120, 2005 U.S. LEXIS 1582, 73 U.S.L.W. 3495 (2005).

Because a prosecutor's failure to correct known false or misleading testimony of a government witness violates due process, such failure requires reversal of a conviction unless there is no reasonable possibility that the falsehood affected the jury's verdict. *Woodall v. United States*, 842 A.2d 690, 2004 D.C. App. LEXIS 54 (2004), writ of certiorari denied by 543 U.S. 1155, 125 S. Ct. 1297, 161 L. Ed. 2d 120, 2005 U.S. LEXIS 1582, 73 U.S.L.W. 3495 (2005).

Alleged lapses on part of prosecution in the questioning of defense witnesses, including apparently overly aggressive cross-examination, did not require reversal of conviction for volun-

tary manslaughter while armed; any excesses on part of prosecution were neither frequent nor egregious and did not divert attention from issues and evidence that were material, no defense witness was intimidated, embarrassed, or otherwise mistreated, no defense testimony was cut off, obscured, or distorted, and there were no improper appeals to passion or prejudice. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Prosecutor's alleged mischaracterization of defendant's testimony in asking defense expert a question did not require reversal of conviction for voluntary manslaughter while armed; trial judge sustained defense objection to question and instructed prosecutor that he could describe what defendant had said without "editorializing," prosecutor rephrased question, and there was no reason to think that jury was misled by prosecutor's characterization of defendant's testimony. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

If challenged questions or comments by prosecutor were improper, and defendant made timely and appropriate objection to them at trial, Court of Appeals must determine whether the defendant suffered substantial prejudice necessitating reversal of his conviction, taking into account such factors as gravity of impropriety in context, centrality of issue affected by it, effect of any corrective action by trial judge, and strength of government's case. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Trial court erred when it allowed prosecutor to cross-examine defendant repeatedly as to whether defendant knew of any reason why two police officer witnesses would "lie against [him]" in their testimony since defendant could not be asked to comment on the credibility of other witnesses. *Allen v. United States*, 837 A.2d 917, 2003 D.C. App. LEXIS 706 (2003).

If a prosecutor made improper comments during trial, then the Court of Appeals must review the remarks in context by considering the gravity of the impropriety, its relationship to the issue of guilt, the effect of any corrective action by the trial judge, and the strength of the government's case in determining whether the comments resulted in substantial prejudice to the defendant. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

So long as the unproduced evidence contained in a prosecutor's opening statement is not touted to the jury as a crucial part of the prosecution's case, a limiting instruction from the trial court is usually a sufficient cure for any possible prejudice. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S.

1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

Prosecutor's characterization in opening statement at murder trial of police investigation as a "monumentally difficult task" due to the fact that the police had to focus on some false facts provided by defendant came close to the limits of permissible comment, but was not serious enough to warrant a mistrial; although the comment was a glorification of the investigation, the course of the investigation was not central to the government's case, and thus, the comment did not seriously prejudice the defense. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

A prosecutor's argument that the defense did not prove what defense counsel said in his opening statement that he would prove is permissible. *Reed v. United States*, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

Jury instructions on the burden of proof, the presumption of innocence, and the fact that the statements of counsel were not evidence mitigated potential prejudice from allegedly improper closing arguments by prosecutor with respect to defense's failure to contradict government's evidence and failure to present promised evidence. *Reed v. United States*, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

In evaluating claims of so-called prosecutive error, appellate court must determine first whether the challenged comments were improper. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

If prosecutor's statements were improper, appellate court considers, viewing the comments in context, the gravity of the impropriety, its relationship to the issue of guilt, the effect of any corrective action by the trial judge, and the strength of the government's case. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

In determining whether substantial prejudice resulted from improper comments by prosecutor, appellate court considers whether it can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Generally, prosecutor should not develop new arguments on rebuttal; however, this is not an inflexible rule, and it is left to trial court to determine, in its discretion, how far the rebuttal may extend. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

A principal purpose of general rule against development of new arguments by prosecutor on rebuttal is to protect the defense from sur-

prise. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

During argument, prosecutor may not refer to evidence not in the record, make comments intended to inflame the jury, or make statements designed to mislead the jury. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

When there is improper argument by the prosecutor, the conviction will be reversed if the error rises to the level of substantial prejudice, that is, unless the Court of Appeals can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Plummer v. United States*, 813 A.2d 182, 2002 D.C. App. LEXIS 733 (2002).

Prosecutor's reference to drug "cartel," which trial judge directed jury to disregard, during closing argument in prosecution for cocaine possession and distribution did not prejudice defendant; there was strong evidence of guilt. *McCallum v. United States*, 808 A.2d 1242, 2002 D.C. App. LEXIS 596 (2002).

Nonlawyer, who claimed that his criminal contempt prosecution was the result of race- or gender-based discrimination, or a violation of equal protection, failed to overcome presumption of regularity supporting prosecutorial decisions. In re *Banks*, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

When reviewing an allegation of prosecutorial error, an appellate court first determines whether the challenged actions or comments were improper; if so, the court must, viewing the remarks in context, consider (1) the gravity of the impropriety, (2) its relationship to the issue of guilt, (3) the effect of any corrective action by the trial judge, and (4) the strength of the government's case. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

Reversal for plain error in cases of alleged prosecutorial misconduct is confined to particularly egregious situations. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

Prosecutor's use of graphic photographs of murder victim during rebuttal, and prosecutor's accompanying comment that jury should return a verdict that it could "live with," were improper for purposes of prosecutorial misconduct, even though trial court had admitted the photographs into evidence, and photographs had been used in the trial; photographs were one and a half foot high and were described by the trial court as "gory," two jurors were compelled to divert their eyes because of photographs, prosecutor, in using photographs, was

not making any point about ballistics or distances, and curative instruction was phrased in general terms, and gave a gentle caution to the jury that the nature of the charges should not affect the verdict, without specifically mentioning the prosecutor's objectionable use of the photographs and comment. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

Inappropriate comments by the government are looked upon with special disfavor when they appear in the rebuttal because at that point defense counsel has no opportunity to contest or clarify what the prosecutor has said. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

The prosecutor's cross-examination of defendant concerning his post-arrest failure to inform the police that he acted in self-defense, and the prosecutor's reference to defendant's post-arrest silence on the issue of self-defense during closing argument rebuttal, did not constitute plain error; defendant was not questioned about post-arrest silence, but rather was questioned about omissions from his voluntary statement to the police that would have supported his claim of self-defense. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

It is improper for an attorney, either prosecutor or defense counsel, to argue facts that are not in evidence. *Parker v. United States*, 797 A.2d 1245, 2002 D.C. App. LEXIS 106 (2002).

Prosecutor's statement during closing argument in prosecution for distributing cocaine, that defense witness who denied defendant's involvement "was motivated by fear" to enter guilty plea in connection with charged incident, was not supported by evidence in record and was thus improper; witness' isolated admission in direct testimony that she was "still very scared," and her cross-examination testimony that she was aware of consequences of being a "snitch," did not prove a link between her fear and her decision to plead guilty. *Parker v. United States*, 797 A.2d 1245, 2002 D.C. App. LEXIS 106 (2002).

Prosecutor's improper remark, that defense witness who denied defendant's involvement "was motivated by fear" to enter guilty plea in connection with charged incident, was not sufficiently prejudicial to require reversal of conviction for distributing cocaine; jury could have found witness not credible based on her nervousness and her testimony that she understood consequences of being a "snitch," court instructed jury that prosecutor was not trying to imply witness' fear of defendant, and government had strong case against defendant. *Parker v. United States*, 797 A.2d 1245, 2002 D.C. App. LEXIS 106 (2002).

When reviewing claims of improper prosecutorial argument, the Court of Appeals

first determines whether the challenged comments were improper and, if so, then the court must, viewing the remarks in context, consider the gravity of the impropriety, its relationship to the issue of guilt, the effect of any corrective action by the trial judge, and the strength of the government's case. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Reversal for plain error in cases of prosecutorial misconduct should be confined to particularly egregious situations. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Prosecutor's comment in closing argument, which exhorted the jury to seek the truth, was not improper, as closing argument clearly placed burden on government to prove defendants' guilt. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Prosecutor's argument that people lie about their innocence but they don't typically lie about their guilt was in the nature of argument and was not improper. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Prosecutor's comment that people lie about their innocence but they don't typically lie about their guilt did not prejudice defendant, even if the comment was an improper expression of the prosecutor's personal opinion that defendant lied and the government witnesses were credible, where the trial court gave clear instructions to the jury, after the prosecutor's closing argument, that the opinions of the lawyers are irrelevant and do not constitute facts in the case. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

A comment by counsel at trial will be within the acceptable range as long as it is in the general nature of argument, and not an outright expression of opinion. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Prosecutor's argument in prosecution for second degree murder while armed, that, among the five friends, "which ones were willing to admit that they did things wrong and which

ones tried to wipe their hands completely” was not manifestly intended to improperly comment on defendant’s election not to testify, as argument could be viewed as comment on inconsistencies and untrustworthiness of defendants’ out-of-court statements. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Prosecutor’s comment that “life is cheap” and, “you get into an argument with a 16 year old punk, 7 hours later you’re shot,” was brief, and did not impermissibly attempt to place the jurors in shoes of the victim, as the comment clearly referred to the victim, the man who did get into an argument with a 16-year-old, and was shot, as evidenced by the very next sentence in which the victim’s name was mentioned. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Prosecutor’s mention of murder victim’s seventy-nine year old blind mother was not improperly designed to elicit empathy, but served to explain why she had not testified and helped to establish the events leading up to and following her son’s death. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Even if prosecutor’s closing argument in response to defendant’s attacks on victim’s credibility had constituted misconduct, defendant nevertheless would not have been entitled to reversal of his convictions for assault with a dangerous weapon and possession of a prohibited weapon, as prosecutor’s closing argument was not a particularly egregious situation resulting in clear miscarriage of justice. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

A prosecutor may not knowingly present false evidence or permit evidence, known to be false, to go uncorrected. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

In determining whether a prosecutor’s unobjected-to remarks in closing argument amounted to plain error, the Court of Appeals considers whether the judge compromised the fundamental fairness of the trial, and permitted a clear miscarriage of justice, by not intervening, *sua sponte*, when the prosecutor made the challenged remarks. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Prosecutor’s unobjected-to statements in closing argument appealing to jurors’ sympa-

thy, describing four murders with which defendant was charged as “horrible story” and “nightmare,” and describing murder of one victim as “execution followed by a burning,” did not require trial court to intervene in order to avoid plain error. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Closing argument may not be used to inflame the minds and passions of the jurors so that their verdict reflects an emotional response rather than the logical analysis of the evidence in light of the applicable law. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Prosecutor’s unobjected-to statements in closing argument appealing to jurors’ sense of civic duty to send message that defendant’s alleged attempt to avoid justice would not stand, and that his alleged effort to obstruct justice would not go unchallenged, did not require trial court to intervene in order to avoid plain error. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Prosecutor’s unobjected-to use of words “we” and “us,” particularly in context such as “[defendant] left us facts,” and “we know graphic things,” was not plain error in murder prosecution, despite claim that jury could have been construed these types of statements as expressing opinion of prosecutor, perhaps based on facts that had not been presented to jury; those words appeared to have been used only to describe evidence as it may have been viewed by all observers in courtroom, including jury. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Where murder defendant theorized that prosecution witness committed first three of four murders with which defendant was charged, prosecutor was entitled to respond in rebuttal closing argument by suggesting that only way one could believe that events transpired in that manner would be if witness had been secretly released from custody, killed fourth victim soon thereafter, gave murder weapon to government so that it could be planted on defendant, and returned to jail—none of which was supported by any evidence. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Motion for mistrial, made at the conclusion of the prosecutor’s rebuttal and premised on allegedly improper arguments during that rebuttal, was timely. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

Decision whether to declare a mistrial on grounds of improper prosecutorial argument is confided to the discretion of the trial court. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

Issue that was first raised in post-trial motion relating to allegedly inflammatory rebuttal

argument by prosecutor would be reviewed for plain error. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

Prosecutor's closing argument, inviting jury to look at prosecutor and at defense counsel and note the difference, representing to jury that prosecutor's entire family lived in a predominantly black neighborhood, and ultimately charging defense counsel with racism, amounted to an improper appeal to evaluate the defense challenge to government's case on the basis of the race and background of the opposing attorneys, rather than the merits, and was an egregious *ad hominem* attack, even if it was provoked by defense counsel's own improper argument accusing police of lying, perjury, and corruption, and attempting to portray police as racially biased. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

In reviewing alleged impropriety in prosecutor's closing argument, the Court of Appeals first considers whether the challenged comments were improper; if they were, then it must, viewing the remarks in context, consider the gravity of the impropriety, its relationship to the issue of guilt, the effect of any corrective action by the trial judge, and the strength of the government's case. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

If a claim of prosecutorial impropriety is properly preserved, the test on appeal is whether the defendant suffered substantial prejudice; that is, the Court of Appeals will reverse unless it can say with confidence that the jury verdict was not substantially swayed by the error. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

Lapses of defense counsel, in attempting to portray police as racially biased and accusing them of lying, perjury, and corruption, did not excuse the prosecutor's inappropriate rebuttal comments and *ad hominem* attacks; the better practice in response to improper argument by defense counsel would have been to object and request curative instructions from the court. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

The threshold issue for the Court of Appeals, in deciding whether to reverse a case because of a statement by the prosecutor, is whether the challenged remark was improper. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Even if a comment by a prosecutor was improper, a new trial is required only when the defendant suffered substantial prejudice as a result. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

In deciding whether there was substantial prejudice to a defendant as a result of a prosecutor's improper comment, so as to require a new trial, the Court of Appeals will consider

factors such as the closeness of the case, the centrality of the issue affected by the error, and the steps taken to mitigate the effects of the error. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

In reviewing claim of prosecutorial misconduct during argument, Court of Appeals determines first whether comment was improper, and then, viewing comment or question in context, consideration must be given to gravity of challenged conduct along with its direct relationship to issue of guilt, effect of specific corrective instructions by trial court, and strength of government's case. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Reversal is justified where challenged prosecutorial conduct brings about substantial prejudice. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Assuming that prosecutor improperly commented on defendant's failure to testify, improper comment was not reversible error, where comment was cut off with an objection, which trial court sustained. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

In assessing cases of alleged prosecutorial impropriety, Court of Appeals considers its gravity, its relationship to guilt or innocence of defendant, effect of any corrective action, and strength of government's case. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Prosecutor's remarks in closing commenting on defendant's opening statement, in which counsel announced strategy of defending burglary charge by conceding unlawful entry and arguing lack of proof of specific intent, did not meet standard for reversible error based on comment on defendant's failure to testify; comments were not on defendant's decision not to testify, but instead on announced trial strategy of defense counsel. *Bowman v. United States*, 652 A.2d 64, 1994 D.C. App. LEXIS 250 (1994).

Prosecutor's impermissible comments on exercise of right not to testify warrant reversal only if challenged remarks were manifestly intended to be comments on failure to testify, or if they were of such a nature that jury naturally and necessarily would take them as such. *Bowman v. United States*, 652 A.2d 64, 1994 D.C. App. LEXIS 250 (1994).

Defendant who failed to object at trial to cross-examination of defense witness about whether she had heard defendant was having affair with his teenage goddaughter could not argue on appeal that questions were so improper as to necessitate reversal, unless defendant could demonstrate plain error affecting his substantial rights. *Johnson v. United States*, 610 A.2d 729, 1992 D.C. App. LEXIS 175 (1992).

Prosecutor's cross-examination about whether defense witness had heard rumors that defendant was having an affair with teenage goddaughter did not give rise to plain error, where judge promptly instructed jury that no evidence in the record indicated that defendant was having affair with his teenage goddaughter. *Johnson v. United States*, 610 A.2d 729, 1992 D.C. App. LEXIS 175 (1992).

Release pending new trial.

Judicial immunity applied to damages suit against sentencing judge by criminal defendant who was sentenced and served term of imprisonment which exceeded maximum penalty for offense of conviction; acts complained of were integral part of judicial process. *McAllister v. District of Columbia*, 653 A.2d 849, 1995 D.C. App. LEXIS 12 (1995).

This section authorizes the court to grant a defendant a new trial and return the defendant to the legal status of being presumptively innocent. Once that occurs, a defendant must be treated like any defendant who is pending trial. A court must therefore consider whether pre-trial release is required by § 23-1321. *United States v. Flynn*, 122 WLR 1021 (Super. Ct. 1994).

Superior Court has the inherent power to release an inmate who is seeking a new trial through a collateral attack on his or her conviction filed pursuant to subsection (c). *United States v. Flynn*, 122 WLR 1021 (Super. Ct. 1994).

Retroactivity.

Statute mandating trial court to vacate any guilty plea upon request if it was entered by defendant who risked deportation but was not so informed did not apply retroactively to defendant who pled guilty to armed robbery prior to effective date of statute. D.C. Code 1981, §§ 16-713, 16-713(a, b). *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

In order to fulfill function of insuring that trial and appellate courts conduct proceedings in conformity with established constitutional standards, it is unnecessary to require that courts hearing collateral appeal apply all new constitutional rules retroactively; rather, courts need only apply constitutional standards prevailing at time original proceeding took place. D.C. Code 1981, § 23-110; 18 U.S.C. § 2255. *Fields v. United States*, 466 A.2d 822, 1983 D.C. App. LEXIS 367 (1983), writ of certiorari denied by 464 U.S. 998, 104 S. Ct. 497, 78 L. Ed. 2d 690, 1983 U.S. LEXIS 2545, 52 U.S.L.W. 3422 (1983).

Review.

— Appealable orders, review.

Defendant's claim that court-imposed requirement that defendant be admitted to drug-

treatment facility in order to have part of sentence suspended did not conflict with authority of Parole Commission to release defendant before end of sentence, and thus claim was not ripe for appeal. *Olden v. United States*, 781 A.2d 740, 2001 D.C. App. LEXIS 210 (2001).

Whether victim impact statements should be excluded entirely from juvenile disposition proceedings would be addressed by Court of Appeals, though juvenile who challenged admission of such statements at his disposition proceeding had been released from custody and his case had been closed; question was the sort of overarching issue important to the resolution of a class of future cases that should be decided notwithstanding the lack of effect on juvenile. *In re M.N.T.*, 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

The denial of a motion for reconsideration, by itself, is not an appealable order. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Defendant could not appeal, by itself, the denial of his motion for reconsideration of his motion to vacate sentence. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Denial of motion to reconsider denial of post-trial motion to vacate sentence was not appealable order. D.C. Code 1981, § 23-110. *Taylor v. United States*, 603 A.2d 451, 1992 D.C. App. LEXIS 49 (1992), writ of certiorari denied by 506 U.S. 852, 113 S. Ct. 155, 121 L. Ed. 2d 105, 1992 U.S. LEXIS 5134, 61 U.S.L.W. 3259 (1992).

Defendant's posttrial motion for access to tape of portion of trial proceedings was not mere assertion of his common-law right of access to judicial record but, rather, was motion brought in preparation for collateral attack on conviction, denial of which was not appealable final order. *Robinson v. United States*, 565 A.2d 964, 1989 D.C. App. LEXIS 198 (1989).

— Harmless error, review.

If a defendant is absent involuntarily, and a constitutional right to be present is at issue, the Court of Appeals will reverse unless the government proves the defendant's absence was harmless beyond a reasonable doubt. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

Trial court's reclassification of petition for writ of habeas corpus as one to vacate sentence was not reversible error; Antiterrorism and Effective Death Penalty Act did not apply to postconviction actions brought in District of Columbia courts, and trial court would have

lacked jurisdiction to consider motion otherwise. *Graham v. United States*, 895 A.2d 305, 2006 D.C. App. LEXIS 146 (2006).

Any possible error in allowing prosecutor to impeach defendant's grandmother with evidence regarding her failure to provide alibi information to authorities at defendant's pre-trial detention hearing did not substantially sway jury's guilty verdict, in trial for armed carjacking and related crimes, in view of substantial evidence of defendant's guilt, victim's positive identification of defendant as one of perpetrators, grandmother gave alibi information promptly to defense counsel, and other alibi witness' testimony indicated that witnesses were not recounting what happened on evening in question. *Matthews v. United States*, 892 A.2d 1100, 2006 D.C. App. LEXIS 10 (2006).

If there is no reasonable possibility that the offending evidence might have contributed to the conviction, the error is harmless beyond a reasonable doubt. *McCoy v. United States*, 890 A.2d 204, 2006 D.C. App. LEXIS 7 (2006).

To conclude that an error was harmless, the Court of Appeals must find it highly probable that the error did not contribute to the verdict. *Najafi v. United States*, 886 A.2d 103, 2005 D.C. App. LEXIS 553 (2005).

Trial court's error in refusing to declare mistrial based on prosecutor's improper remarks, repeatedly claiming that defendant was "running a business" of selling drugs, was harmless in prosecution for distribution of a controlled substance; although gravity of impropriety was substantial, statements were not central to issue of guilt, and government's evidence was overwhelming since bills used by police to purchase pills were recovered from defendant's person, and defendant provided no explanation of his possession of bills, and thus, defendant was not substantially prejudiced by improper remarks. *Najafi v. United States*, 886 A.2d 103, 2005 D.C. App. LEXIS 553 (2005).

Any error of the trial court in not taking corrective action with respect to prosecutor's comments during closing argument calling jury's attention to defendant's actions that placed witness and her infant son in harm's way was harmless, in prosecution for involuntary manslaughter while armed and other offenses; comments tended to arouse passions of jury, but they were brief, viewed in context, reference to witness' apartment was fleeting, even if an unnecessary effort to explain concept of transferred intent, and government's case against defendant was strong. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

In reviewing for harmless error, the appellate court considers whether it can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

Assuming trial court erred in providing jury with magnifying glasses to examine fingerprint exhibits, the jury's judgment was not substantially swayed by the decision to provide the magnifying glasses, and thus, any such error was harmless, where the jury did not immediately return a verdict after being supplied with the magnifying glasses, and there was compelling evidence of defendant's guilt. *Evans v. United States*, 883 A.2d 146, 2005 D.C. App. LEXIS 492 (2005), writ of certiorari denied by 549 U.S. 870, 127 S. Ct. 357, 166 L. Ed. 2d 121, 2006 U.S. LEXIS 6986, 75 U.S.L.W. 3168 (2006).

Where a trial court erred in limiting a defendant's cross examination, but the error is not of constitutional dimension, reversal will only be required if, upon consideration of the totality of the circumstances, the error caused significant prejudice. *Evans v. United States*, 883 A.2d 146, 2005 D.C. App. LEXIS 492 (2005), writ of certiorari denied by 549 U.S. 870, 127 S. Ct. 357, 166 L. Ed. 2d 121, 2006 U.S. LEXIS 6986, 75 U.S.L.W. 3168 (2006).

For a Confrontation Clause error caused by a trial court's restriction of a defendant's cross examination of a witness to be considered harmless, it must be clear beyond a reasonable doubt (1) that the defendant would have been convicted without the witness's testimony or (2) that the restricted line of inquiry would not have weakened the impact of the witness's testimony. *Evans v. United States*, 883 A.2d 146, 2005 D.C. App. LEXIS 492 (2005), writ of certiorari denied by 549 U.S. 870, 127 S. Ct. 357, 166 L. Ed. 2d 121, 2006 U.S. LEXIS 6986, 75 U.S.L.W. 3168 (2006).

Where a trial court precluded a meaningful degree of cross examination by a defendant as guaranteed by the Sixth Amendment, and a proper objection was lodged, the Court of Appeals reviews the trial court's action under the harmless constitutional error standard. *Evans v. United States*, 883 A.2d 146, 2005 D.C. App. LEXIS 492 (2005), writ of certiorari denied by 549 U.S. 870, 127 S. Ct. 357, 166 L. Ed. 2d 121, 2006 U.S. LEXIS 6986, 75 U.S.L.W. 3168 (2006).

Where the government has failed to claim in timely fashion that erroneous admission of hearsay evidence was harmless in the traditional sense, the Court of Appeals should apply the harmless error doctrine only when harm-

lessness is obvious. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

As an appellate court, the Court of Appeals has the authority to find trial court error harmless notwithstanding the government's failure to claim harmlessness. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

In order to affirm a conviction despite a trial error, the Court of Appeals must conclude after reviewing the weight of the evidence of guilt, as well as the nature of the error, that the judgment of guilt was not substantially affected by the error. *Brown v. United States*, 881 A.2d 586, 2005 D.C. App. LEXIS 457 (2005).

Error in trial court's giving of jury instruction that government had no duty to photograph alleged drug activity or to take fingerprints to corroborate other evidence in drug case was harmless; instruction did not undermine defense given that defendant was able to argue that lack of corroborative evidence weakened government's case, government did not compound error by suggesting in closing argument that it had no duty to collect corroborative evidence, and government's case against defendant was strong. *Brown v. United States*, 881 A.2d 586, 2005 D.C. App. LEXIS 457 (2005).

A harmless error inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error, but rather the inquiry is whether the error itself had substantial influence, and if so, or if one is left in grave doubt, the conviction cannot stand; in other words, court must determine whether the judgment was substantially swayed by the error without stripping the erroneous action from the whole. *Brown v. United States*, 881 A.2d 586, 2005 D.C. App. LEXIS 457 (2005).

Where record convinces reviewing court that an error did not influence the jury or had but very slight effect, the verdict and the judgment should stand, except perhaps where the departure is from a constitutional norm or a specific command of Congress; however, if court cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it must conclude that substantial rights were affected, and that the error was not harmless. *Brown v. United States*, 881 A.2d 586, 2005 D.C. App. LEXIS 457 (2005).

Trial court's error in excluding witness's testimony as to defendant's reputation for peacefulness did not cause prejudice requiring reversal for abuse of discretion, in proceeding in which defendant sought to seal records relating to his arrest; although credibility was central issue, and judge eventually disbelieved defendant's version of what happened, there was

evidence, apart from excluded testimony about defendant's peaceful character, that corroborated his claim, and it was doubtful that judge would have been persuaded to requisite level of clear and convincing evidence by introduction witness's testimony about defendant's peaceful character. *Rose v. United States*, 879 A.2d 986, 2005 D.C. App. LEXIS 408 (2005).

Trial court's error, if any, in declining to admit as substantive evidence portions of transcript from defendant's first trial, in which complainant testified regarding defendant's truck, was harmless, during second trial for assault, where defense counsel thoroughly brought out the alleged inconsistencies in trial testimony, including reading the prior testimony verbatim. *Ramirez v. United States*, 877 A.2d 1040, 2005 D.C. App. LEXIS 323 (2005).

Even if trial court erred in trial for murder and weapons offenses by precluding defendant from cross-examining witness about a false and inconsistent statement he made before the grand jury, in which witness testified that he could identify various weapons he saw at victim's shooting because he had been an Airborne Ranger in army, such error was harmless; witness was impeached with a prior conviction, witness had to admit a lack of candor in seeking Social Security benefits, witness admitted prior drug usage and assisting a drug dealer to secure drugs on the night of the offenses, witness acknowledged testifying pursuant to a plea agreement, and other inconsistencies in witness's trial testimony were shown. *Bennett v. United States*, 876 A.2d 623, 2005 D.C. App. LEXIS 266 (2005), writ of certiorari denied by 546 U.S. 1123, 126 S. Ct. 1134, 163 L. Ed. 2d 914, 2006 U.S. LEXIS 460 (2006).

Cumulatively, trial court's error in not severing offenses involving adult complainant from offenses involving juvenile complainants and prosecutor's improper action of asking each defense character witness, on cross-examination, to assume hypothetically that defendant had committed the criminal acts alleged were not harmless; when character witness responded that his opinion of defendant would not change, given knowledge that defendant committed charged crime, defendant suffered the harm that jury viewed witness as incredible, willing to testify for defendant no matter what, and jury might infer that one accused of multiple crimes must be guilty of at least one them. *McFerguson v. United States*, 870 A.2d 1199, 2005 D.C. App. LEXIS 142 (2005).

To affirm convictions on the basis of harmless error, appellate court must conclude after reviewing the weight of the evidence of guilt, as well as the nature of the errors, that the judgment of guilt was not substantially affected by the errors. *McFerguson v. United States*, 870 A.2d 1199, 2005 D.C. App. LEXIS 142 (2005).

Inconsistent verdicts by themselves do not mandate reversal; the most that can be said in such cases is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

In deciding whether constitutional error was harmless beyond a reasonable doubt, the court must consider whether the government has shown beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

Error was not harmless beyond a reasonable doubt, in prosecution for robbery, as to violation of defendant's right under Confrontation Clause to cross-examine witnesses regarding bias by failing to allow him to conduct any cross-examination of prosecution's key witness regarding criminal charge against witness which had been placed on "stet" docket in Maryland, which meant Maryland prosecutor had not elected to proceed on indictment but could later decide to proceed on it; jury's question to court during deliberations, regarding whether witness could be prosecuted in District of Columbia for participating in the robbery, illustrated jury's concern with witness' veracity and bias, jury acquitted defendant of greater offense of armed robbery, and witness was the only eyewitness to affirmatively identify defendant as the perpetrator. *Hart v. United States*, 863 A.2d 866, 2004 D.C. App. LEXIS 686 (2004).

Error, if any, in submitting first-degree and second-degree murder charges to jury was harmless; there was no basis to conclude that mere submission of greater charges resulted in confusion, unduly influenced jury, or led them to decide case on anything other than evidence and law, and defendant was acquitted of both first-degree and second-degree murder. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Erroneous admission of out-of-court videotaped admissions and plea statement of non-testifying codefendants reasonably contributed to guilty verdict for defendant on charges of murder, assault, and possession of a firearm, and thus, was not harmless; prosecution stated that jury should consider deciding conspiracy count first, because if defendant was guilty of conspiracy, then he was guilty of substantive offenses, defendant's membership in conspiracy was established by videotape and plea statements, and prosecution used statements to establish motive for defendant's commission of substantive offenses. *Williams v. United States*,

858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Erroneous admission of out-of-court videotaped admissions and plea statement of non-testifying codefendants reasonably contributed to guilty verdict for defendant on conspiracy charge, and thus, was not harmless; although there was independent testimony admitted by co-conspirator at trial, prosecutor drew attention to videotape and plea statements implying that out-of-court statements should be considered more seriously than co-conspirator's testimony and encouraged jury to look at videotape and plea statements more carefully, showing that inadmissible evidence was used to strengthen otherwise less than compelling proof of guilt from co-conspirator's testimony. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Where a conviction is based upon the admission of evidence in violation of a defendant's Sixth Amendment right to confrontation, it is reversible unless the error is harmless beyond a reasonable doubt; this standard requires that the government show beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Error in trial court's admission of defendant's statement, which was obtained in violation of *Miranda*, that defendant approached victim, that victim reached toward victim's waistband, that waistband had something shiny and silver, and that defendant then shot victim was not harmless, in murder trial; defendant asserted self-defense, government was required to discredit claim of self-defense by relying on defendant's statement, given testimony by eyewitnesses that victim kept advancing on defendant even after first shots were fired, and defendant's statement was focal point of prosecution. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Erroneous admission into evidence of an illegally obtained confession is harmless beyond a reasonable doubt when there remains overwhelming evidence to support the jury's verdict. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct.

2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Probative value of evidence of officer's testimony regarding witness's adoption of another eyewitness's account was not substantially outweighed by danger of unfair prejudice in assault prosecution; questioning was to rehabilitate government's witness, the other eyewitness was barely mentioned, government cut off any additional testimony regarding other eyewitness, and government did not refer to other eyewitness in its subsequent arguments. *Anderson v. United States*, 857 A.2d 451, 2004 D.C. App. LEXIS 425 (2004).

Any error in admission of 911 tape on grounds that caller did not have personal knowledge of statement was harmless error in assault prosecution; defendant knew in advance of discrepancy between statement and caller's grand jury testimony, caller was present at trial and was fully cross-examined, caller admitted on 911 tape that she did not see the assault, defendant admitted to conduct referred to on tape, and victim testified as to what occurred. *Anderson v. United States*, 857 A.2d 451, 2004 D.C. App. LEXIS 425 (2004).

Government's cross-examination of defendant regarding evidence of crime for which defendant was not on trial did not constitute plain error; it was not obvious that government had not produced substantive evidence in accordance with its proffer, any error in allowance of the cross-examination could not be deemed clear under current law, and jury was instructed that counsel's questions to defendant were not evidence. *Anderson v. United States*, 857 A.2d 451, 2004 D.C. App. LEXIS 425 (2004).

Plain error is found only in the exceptional case where, after reviewing entire record, it can be said claimed error is a fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done. *Anderson v. United States*, 857 A.2d 451, 2004 D.C. App. LEXIS 425 (2004).

In some cases, the properly admitted evidence of guilt is so overwhelming, and the prejudicial effect of the co-defendant's admission is so insignificant by comparison, that it is clear beyond a reasonable doubt that the improper use of the admission was harmless error; however, where there is a reasonable possibility that the co-defendant's statements contributed to the defendant's conviction, reversal is required. *Morten v. United States*, 856 A.2d 595, 2004 D.C. App. LEXIS 422 (2004).

Determining whether a defendant has suffered substantial prejudice under the nonconstitutional harmless error test entails balancing the gravity of the error, its direct relationship to the issue of innocence or guilt, and the effect of specific corrective instructions of the trial court, if any, against the weight of

the evidence of defendant's guilt. *Murray v. United States*, 855 A.2d 1126, 2004 D.C. App. LEXIS 421 (2004).

Under the nonconstitutional harmless error doctrine, reversal is not required if the reviewing court can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Murray v. United States*, 855 A.2d 1126, 2004 D.C. App. LEXIS 421 (2004).

Government's late disclosure of assault victim's statement to police that shooter had worn a mask did not impermissibly prejudice defendant's trial preparation, opening statement, or choice of trial strategy, where defendant already had ample incentive to search for eyewitnesses casting doubt on defendant's identity as shooter, and where knowledge of statement at issue would not likely have affected defendant's strategy of imputing bias to government's witnesses and questioning their ability to observe shooting. *Moore v. United States*, 846 A.2d 302, 2004 D.C. App. LEXIS 158 (2004).

Late disclosure of assault victim's statement to police that shooter had worn a mask was not prejudicial to defendant's right to impeach victim or officer to whom statement was made, where trial court allowed defense counsel to cross-examine both victim and officer outside presence of jury and determine whether he wished to recall them for re-cross-examination, and rather than recall them counsel chose to emphasize in closing argument negative implications of discrepancy between officer's testimony and victim's silence on the stand with respect to mask, as well as government's suppression of victim's prior statement. *Moore v. United States*, 846 A.2d 302, 2004 D.C. App. LEXIS 158 (2004).

Assuming that trial court barred additional cross-examination of eyewitnesses to shooting following late disclosure of victim's statement to police that shooter had worn a mask, any error in doing so did not prejudice defendant and was harmless, where each eyewitness had known defendant for five years or more, each testified to having observed defendant's actions before and during shooting, and none was shown to have substantial motive to accuse defendant falsely, and where other evidence, including another witness' testimony that defendant admitted to shooting, was unaffected by victim's late-disclosed statement. *Moore v. United States*, 846 A.2d 302, 2004 D.C. App. LEXIS 158 (2004).

Failure to correct prosecution witness's false testimony on cross-examination that he did not believe alleged perpetrator shot another man on separate occasion, that he did not tell detective that alleged perpetrator was "armed to the teeth" when he shot other man, and that he was not afraid of alleged perpetrator, could not, in

any reasonable likelihood, have caused jury to discredit identification of defendant as victim's shooter in murder trial and return a verdict it otherwise would not have; witness's description of defendant as individual who fled shop shortly after victim was killed was substantially corroborated by other witnesses. *Woodall v. United States*, 842 A.2d 690, 2004 D.C. App. LEXIS 54 (2004), writ of certiorari denied by 543 U.S. 1155, 125 S. Ct. 1297, 161 L. Ed. 2d 120, 2005 U.S. LEXIS 1582, 73 U.S.L.W. 3495 (2005).

Any error in admitting evidence of collateral matter of defendant's alleged dishonesty in his relationship with witness, to rebut defendant's assertion that he had been open and candid in his various relationships with both witness and victim, was not reversible error; although witness's testimony was unflattering to defendant, it was so tangential that defendant suffered no significant prejudice from it. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Any error in prosecutor's apparently asking one defense witness to comment on another defense witness's credibility did not require reversal of conviction for voluntary manslaughter while armed; witness did not answer the question, and trial judge sustained the defense objection and warned the prosecutor that his question was improper. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Prosecutor's alleged asking of questions to two defense witnesses without a proper foundation did not require reversal of conviction for voluntary manslaughter while armed; questions were tangential, and trial judge intervened to sustain the defense objection and defuse any potential for prejudice. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Any error in prosecutor's questioning defense witness about defendant's alleged past beatings of victim, apparently without a good faith basis for questions, did not substantially prejudice defendant, and thus, reversal of conviction for voluntary manslaughter while armed was not required; prosecutor's reference to possibility of past physical abuse was not pursued, trial judge took prompt and forceful corrective action, and witness herself ultimately negated the adverse implication. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Any error in admitting evidence of defense witness's offer and refusal to take a police-administered polygraph examination was harmless; although witness's testimony that victim was suicidal was crucial to the defense because it provided almost the sole corroboration of defendant's claim that victim shot herself in his apartment, witness's account of victim's alleged suicidal gesture was thor-

oughly discredited in other ways. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Despite its status as a pariah, not all references to polygraph tests warrant reversal; harmless error rule applies. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

The critical factors considered in making a harmless error determination are the closeness of the case, the centrality of the issue affected by the error, and the steps taken to mitigate the effects of the error. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

In making harmless error determination, the Court of Appeals must weigh the severity of the error against the importance of the determination in the whole criminal proceeding and the possibility for prejudice as a result. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Standard of review for harmless error requires determination as to whether it can be said with fair assurance, without stripping the erroneous action from the whole, that the error did not sway the verdict. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Trial court's admission of irrelevant and inadmissible threats evidence through witness's direct examination testimony describing manner in which two trial spectators made throat-slashing gestures to him during his testimony during murder trial, absent evidence linking defendant to spectators, was not harmless error, but was rather prejudicial, likely having substantial influence on guilty verdict; case was close, dependent upon credibility of two witnesses whose testimony was impeached with prior inconsistent statements and motives for not telling the truth, and State relied on threats evidence throughout closing jury argument. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Trial court's error in allowing prosecutor to cross-examine defendant repeatedly as to whether defendant knew of any reason why two police officer witnesses would lie was prejudicial and, thus, constituted reversible error; the issue of whom to believe was not so one-sided as to neutralize the impact of the prosecutor's

questions. *Allen v. United States*, 837 A.2d 917, 2003 D.C. App. LEXIS 706 (2003).

Once an appellant has shown sufficient cause for his failure to raise a claim on direct appeal, appellant must then shoulder the burden of showing, not merely that the errors at his trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

Standard used to determine whether trial court's constitutional error was harmless beyond a reasonable doubt was applicable to trial court's error in failing to send marshals to secure witness's appearance; trial court's refusal to send marshals implicated defendant's constitutional right to compulsory process. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

Standard used to determine whether trial court's constitutional error was harmless beyond a reasonable doubt does apply where the trial court's evidentiary ruling wholly deprived the defendant of any opportunity to present evidence concerning a central issue in the case. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

When a defendant's constitutional rights are affected by a trial court error, an appellate court can affirm only if we are convinced that the error was harmless beyond a reasonable doubt. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

Trial court errors that do not implicate constitutional rights do not warrant reversal if an appellate court can say with fair assurance that the judgment was not substantially swayed by the error. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

The test for substantial prejudice is essentially the same as analysis under the harmless error rule: whether, after pondering all that happened without stripping the erroneous action from the whole, the Court of Appeals can conclude that the judgment was not substantially swayed by the error. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

Prosecutor's comment in opening statement at defendant's murder trial that one witness was living in a nursing home and had never recovered from the incident did not prejudice the defendant to the extent that reversal was warranted, even though the witness never testified and no evidence was introduced concerning his whereabouts or his state of health, where the witness's condition was only touched upon near the beginning of the opening statement, it was never mentioned again over the

course of the six-day trial, and it was only tangentially related to the issues at trial. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

Prosecutor's comments in opening statement that evidence suggested that murders were drug-related and might have been related to drug debts resembled a closing argument more than an opening statement in that the comments were unduly argumentative and urged the jury to draw inferences based on the facts the prosecutor had recounted; however, the prejudice to the defense was slight given that the inferences argued by the prosecutor were ultimately supported by the evidence and that the prosecutor was attempting to explain in his opening how the police had zeroed in on defendant as a suspect. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

Prosecutor's description in opening statement in murder trial of alibis of two men who were originally arrested for the murders as being "airtight" was improper in that the strength of those alibies was a matter for the jury to decide; however, the comment was an isolated remark, and any resulting prejudice was negligible. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

Prosecutor's comment in opening statement for the jurors to be attentive during the murder trial "out of respect for the three individuals who lost their lives" was an improper statement that appealed to the sympathy of the jury; however, in context the statement was not unduly prejudicial given that the prosecution only asked for the jurors' "undivided attention" and did not ask them to "send a message" to the defendant. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

Prosecutor's recitation in closing argument during murder trial of the occupations and residences of individual jurors was improper and breached the anonymity that shields individual jurors from harassment; however, the statements were made during the rebuttal portion of a long closing argument, after a six-day trial, and they were not related to the evidence in the case, and thus, the impropriety was not severe enough to warrant reversal. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by

540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

Cumulative effect of prosecutor's improper comments during murder trial did not warrant reversal; trial judge was very attentive to defense counsel's repeated objections, judge instructed jury that statements by lawyers during opening and closing arguments were not evidence, and government had a strong case against defendant given that he was seen the evening before the crime wearing the same clothing as one of the intruders, he possessed a gun similar to the one used in the crime, he made a 911 call with dubious information about the crime, and he was positively identified by one of the victims. *Bailey v. United States*, 831 A.2d 973, 2003 D.C. App. LEXIS 554 (2003), writ of certiorari denied by 540 U.S. 1167, 124 S. Ct. 1183, 157 L. Ed. 2d 1215, 2004 U.S. LEXIS 925, 72 U.S.L.W. 3487 (2004).

Any error resulting from trial court's admission of evidence of allegedly prior bad acts was harmless, in prosecution for simple assault, as defendant was tried by the court rather than a jury, and record on appeal did not show that trial court relied on challenged acts in rendering its decision. *Cook v. United States*, 828 A.2d 194, 2003 D.C. App. LEXIS 435 (2003).

If it is determined that prosecutor's argument was improper, and the defendant has preserved the issue for appellate review, appellate court will reverse only if it is shown that substantial prejudice resulted. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

There was no reasonable probability that revelation of evidence that prosecution's narcotics expert had given perjured testimony falsifying his credentials would have changed jury's verdict in prosecution for distributing cocaine; expert's testimony did not relate to facts of crime, it related only to nature of substance defendant sold and to procedures by which police generally maintained custody of drugs, and nothing rebutted presumption that object defendant sold was substance eventually identified as cocaine, or suggested that had jury learned of expert's past perjury and thus been troubled by his reliability as witness, they would have drawn further inference that police in general allowed corruption of evidence in case. *Benton v. United States*, 815 A.2d 371, 2003 D.C. App. LEXIS 14 (2003).

Decisive factors in determining whether prosecutorial misconduct rises to the level of substantial prejudice are the gravity of the misconduct, its direct relationship to the issue of innocence or guilt, the effect of corrective instructions, if any, and the weight of the evidence of the defendant's guilt. *Plummer v. United States*, 813 A.2d 182, 2002 D.C. App. LEXIS 733 (2002).

Defendant was not prejudiced by constructive amendment to indictment that occurred when he entered guilty plea to robbery rather than charged offense of assault with intent to rob, and thus that constructive amendment was not "plain error"; penalties for the two offenses were identical, defendant received maximum sentence available under either statute, and defendant's version of charged incident admitted conduct that constituted assault with intent to commit robbery as an aider or abettor. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

If a constitutional error has occurred, reversal is required, unless the government shows it was harmless beyond a reasonable doubt. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Where a trial court's evidentiary ruling wholly deprives a defendant of any opportunity to cross-examine a witness or present evidence concerning bias or a central issue in the case, an appellate court may affirm only if it is convinced that the error was harmless beyond a reasonable doubt. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Where a trial court's evidentiary ruling wholly deprives a defendant of any opportunity to present evidence, harmlessness is determined applying the standard of harmlessness beyond a reasonable doubt. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Even if trial court erred in admitting in prosecution for gun-related offenses, other crimes evidence of videotape made prior to charged crimes that showed defendant holding a gun near witness's head, as government sought to establish that such gun was used in charged offenses, defendant did not suffer sufficient prejudice to warrant reversal; several other witnesses testified that defendant possessed a handgun, trial court provided extensive limiting instructions to the jury regarding such evidence, and government's closing argument referred to videotape only for the purpose of demonstrating defendant's possession of the gun. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Even if trial court committed error by failing to scrutinize whether the reasons offered by prosecution in exercising his peremptory challenges were a pretext for racial discrimination, such error did not warrant reversal for convictions for gun-related offenses. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Trial court's error in responding to jury's question concerning constructive possession, in prosecution on weapons possession charges,

was not harmless error, despite evidence that defendant personally possessed firearm, where court's error was one of law permitting conviction based on theory unsupported by any evidence; jury's note to court suggested that jury was considering verdict based on joint constructive possession, and court's response did not inform jurors of that theory's unavailability. *Thomas v. United States*, 806 A.2d 626, 2002 D.C. App. LEXIS 527 (2002).

"Structural errors" in a trial can never be harmless, but "trial errors" can be deemed harmless, depending on circumstances. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

Trial court's error in excluding defendant's mother from being re-called to witness stand in murder trial to corroborate defendant's testimony that defendant and his mother had not discussed his alibi or any other aspect of the case, as sanction for mother's violation of witness sequestration rule, was not harmless beyond a reasonable doubt; because of lack of physical evidence, a confession, or the like, the case turned entirely on jury's credibility determinations, jurors might reasonably have inferred that mother was not re-called because she could not truthfully corroborate defendant's testimony, and trial court did not take measures to mitigate the prejudice to defendant, such as defendant's suggestion to instruct the jury on witness sequestration, so they would understand why mother was unable to be recalled to testify. *Benn v. United States*, 801 A.2d 132, 2002 D.C. App. LEXIS 364 (2002), remanded by 978 A.2d 1257, 2009 D.C. App. LEXIS 384 (D.C. 2009).

The "harmless beyond a reasonable doubt" test, for errors of constitutional magnitude, applied to trial court's exclusion of defendant's mother from being re-called to witness stand in murder trial, to rebut prosecutor's inference that her testimony would differ from defendant's testimony that defendant and his mother had not discussed his alibi or any other aspect of the case, as sanction for mother's violation of witness sequestration rule. *Benn v. United States*, 801 A.2d 132, 2002 D.C. App. LEXIS 364 (2002), remanded by 978 A.2d 1257, 2009 D.C. App. LEXIS 384 (D.C. 2009).

In determining whether the error was harmless, the appellate court looks to the closeness of the case, the centrality of the issue affected by the error, and any steps taken to mitigate the effects of the error. *Benn v. United States*, 801 A.2d 132, 2002 D.C. App. LEXIS 364 (2002), remanded by 978 A.2d 1257, 2009 D.C. App. LEXIS 384 (D.C. 2009).

The trial court's failure to address defendant's Fifth Amendment claim that he was effectively denied the right to testify by the trial court's allegedly erroneous admission of defendant's previous assault conviction was harm-

less error; evidence was sufficient to support the finding that defendant had a previous conviction for assault, which served as a link to allow introduction of defendant's prior murder conviction as impeachment evidence, and the affidavit in support of defendant's argument that he had not been convicted of assault did not and could not have been considered by the judge when ruling on defendant's impeachable convictions. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

Absent a request for a limiting instruction that detective's testimony, that he had not believed witness' statements that witness had not seen the shooting, was being admitted only for the purpose of explaining detective's decision to continue to seek out and eventually re-interview the witness, the trial court did not commit reversible error in failing to give such an instruction, in prosecution for first-degree murder while armed. *Robinson v. United States*, 797 A.2d 698, 2002 D.C. App. LEXIS 98 (2002), writ of certiorari denied by 540 U.S. 1212, 124 S. Ct. 1491, 158 L. Ed. 2d 139, 2004 U.S. LEXIS 1541, 72 U.S.L.W. 3538 (2004).

Absent a request by defendant to the trial court for additional relief regarding improper testimony, defendant must show plain error in the trial court's failure to sua sponte provide additional relief. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

It is not reversible error to admit irrelevant evidence that lacks probative value but does not prejudice a defendant. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

Because the right of peremptory challenges is not constitutionally based, any violation of the process is analyzed as a "trial error," subject to harmless error review; defendant must show there was error in the trial court's jury selection procedure and that he suffered prejudice as a result of the error. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Trial court's refusal to admit photograph of government witness holding a revolver similar to one used in murder was harmless, given that without the photograph, jury still had ample evidence to conclude that the witness was neither uncomfortable with guns or had them only for his own protection, and that he was more likely than defendant to have used the revolver in the shooting; the witness admitted to owning another gun, the pistol, that was used by one of the shooters in the murder, he testified that there had been a photograph taken of him holding a revolver, and that he was familiar with the weapon, and had regular access to it, and that he, along with one of the shooters, went to get the guns actually used to kill the

victim, and helped dispose of them after the shooting. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

The test for evaluating reversible prejudice from constitutional violations, i.e., whether the error was harmless beyond a reasonable doubt, is applied only where a defense or discrete line of questioning is precluded. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

The Court of Appeals will reverse, under the nonconstitutional harmless error doctrine, if it cannot say with fair assurance, after pondering all that happened without stripping an erroneous action from the whole, that the judgment was not substantially swayed by the error. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Where defendants raise timely objections to the alleged improper comments that were made during the government's closing and rebuttal arguments to which the trial court chose not to take any remedial action, review by the Court of Appeals is for harmless error. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

— In general.

District court lacked jurisdiction to consider claim of ineffective assistance of appellate counsel raised by petitioner in his § 2241 habeas petition challenging murder and related convictions in District of Columbia court, where petitioner had not moved to have the District of Columbia Court of Appeals recall the mandate. *Earle v. United States*, 808 F.Supp.2d 301, 2011 U.S. Dist. LEXIS 101376 (2011).

Court of Appeals will affirm a trial court's summary denial of a motion attacking a sentence only if the claims in the motion (1) are palpably incredible, (2) are vague and conclusory, or (3) even if true, do not entitle the movant to relief; the Court of Appeals must be satisfied that under no circumstances could the movant establish facts warranting relief. *Aiken v. United States*, 956 A.2d 33, 2008 D.C. App. LEXIS 395 (2008).

Although the absence of factual findings in connection with a ruling on a motion for relief from conviction does not automatically constitute error by the trial court, it does, however, require more careful review by the appellate court. *Ott v. United States*, 952 A.2d 156, 2007 D.C. App. LEXIS 843 (2008).

In order to uphold the denial of a motion attacking sentence without a hearing, the Court of Appeals must be satisfied that under no circumstances could the petitioner establish

facts warranting relief. *Jones v. United States*, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

The Court of Appeals will affirm the trial court's denial of a motion attacking sentence without a hearing only if the claims: (1) are palpably incredible; (2) are vague and conclusory; or (3) even if true, do not entitle the movant to relief. *Jones v. United States*, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

An appellate court will uphold the denial a motion for postconviction relief without a hearing only if satisfied that under no circumstances could the defendant establish facts warranting relief. *Cade v. United States*, 898 A.2d 349, 2006 D.C. App. LEXIS 209 (2006).

It is a quintessential appellate function to review a party's attempt to establish the law of the jurisdiction in future cases. *United States v. Jenkins*, 887 A.2d 1013, 2005 D.C. App. LEXIS 647 (2005).

Concept of "exercise of discretion" is a review-restraining one; appellate court role in reviewing "the exercise of discretion" is supervisory in nature and deferential in attitude. *Sepulveda-Hambor v. District of Columbia*, 885 A.2d 303, 2005 D.C. App. LEXIS 530 (2005).

Upon review of a trial court's decision to grant a mistrial, an appellate court considers the record as a whole to determine whether the mistrial was justified by manifest necessity. *Butler v. United States*, 884 A.2d 1099, 2005 D.C. App. LEXIS 513 (2005).

An appellate court will not overturn the trial court's decision on whether to grant a mistrial unless it appears unreasonable, irrational or unfair, or unless the situation is so extreme that failure to reverse would result in a miscarriage of justice. *Butler v. United States*, 884 A.2d 1099, 2005 D.C. App. LEXIS 513 (2005).

On review, the Court of Appeals ordinarily will accept a trial judge's determination that there is or is not a high degree of necessity for a mistrial, without a less drastic alternative, as long as that determination is reasonable. *Butler v. United States*, 884 A.2d 1099, 2005 D.C. App. LEXIS 513 (2005).

Court of Appeals will reverse for plain error only in an extreme situation in which the defendant's substantial rights were so clearly prejudiced that the very fairness and integrity of the trial was jeopardized. *Butler v. United States*, 884 A.2d 1099, 2005 D.C. App. LEXIS 513 (2005).

Court of Appeals may affirm a trial court's decision for reasons other than those given by the trial court. *Adams v. United States*, 883 A.2d 76, 2005 D.C. App. LEXIS 469 (2005).

When reviewing a trial court's decision to limit a defendant's cross examination, the Court of Appeals first determines whether the trial court's decision violated the defendant's Sixth Amendment right to confront the wit-

nesses against him by precluding a meaningful degree of cross examination. *Adams v. United States*, 883 A.2d 76, 2005 D.C. App. LEXIS 469 (2005).

Affirmance on grounds other than those given by the trial court is appropriate only where there has been no procedural unfairness. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

In general, an appellate court may affirm a judgment on any valid ground. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

On appellate review, an exercise of judicial discretion will not be reversed unless it appears that it was exercised on grounds, or for reasons, clearly untenable or to an extent clearly unreasonable. *Fuller v. United States*, 873 A.2d 1108, 2005 D.C. App. LEXIS 253 (2005).

Appellate court will only reverse the denial of a motion for a mistrial if the decision appears irrational, unreasonable, or so extreme that failure to reverse would result in a miscarriage of justice. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

The determination whether to grant or deny a mistrial is within the broad discretion of the trial court and appellate review of such a determination is deferential. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

Court of Appeals, in determining whether defendant had been "in custody" for Miranda purposes when police questioned her in her home, would not consider whether defendant, a recent, non-English-speaking immigrant of limited means and resources, was at pronounced cultural and socioeconomic disadvantage in her encounter with police, which disadvantage might have increased her anxiety and submissiveness, as such factor was inherently subjective, and Miranda custody inquiry was an objective test. *Morales v. United States*, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

The Court of Appeals will not permit a party to assert one theory at trial and another theory on appeal. *Brown v. United States*, 864 A.2d 996, 2005 D.C. App. LEXIS 2 (2005).

Issues regarding the merger of convictions must be reviewed de novo to determine whether there has been a violation of the Double Jeopardy Clause of the Federal Constitution. *Alfaro v. United States*, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

The trial judge's decision on the admission or exclusion of expert testimony will be affirmed unless it is manifestly erroneous. *Ahmed v. United States*, 856 A.2d 560, 2004 D.C. App.

LEXIS 449 (2004), writ of certiorari denied by 544 U.S. 955, 125 S. Ct. 1719, 161 L. Ed. 2d 536, 2005 U.S. LEXIS 2891, 73 U.S.L.W. 3569 (2005).

Appellate court can take notice of its own records and of other cases including the same subject matter or questions of a related nature between the same parties. *Outlaw v. United States*, 854 A.2d 169, 2004 D.C. App. LEXIS 387 (2004).

On appeal, appellate court can take notice of such ascertainable facts as the disposition of related appeals, guilty pleas, and revocations of probation. *Outlaw v. United States*, 854 A.2d 169, 2004 D.C. App. LEXIS 387 (2004).

The denial of a continuance is a matter within the sound discretion of the court and is not subject to review absent clear abuse. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

In deciding whether a trial court in any case has abused its discretion, the reviewing court should consider whether the decision maker failed to consider a relevant factor, whether he relied upon an improper factor, and whether the reasons given reasonably support the conclusion. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

With respect to issue of whether reasonable suspicion or probable cause existed to justify a seizure, where the record supports the trial judge's material factual findings, the appellate court must reach an independent legal conclusion as to whether there was reasonable suspicion for the stop. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

An exercise of judicial discretion will not be reversed unless it appears that it was exercised on grounds, or for reasons, clearly untenable or to an extent clearly unreasonable. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

An appellate court must defer to a trial judge's credibility determinations. *In re A.L.*, 839 A.2d 678, 2003 D.C. App. LEXIS 704 (2003).

The Court of Appeals' review of a trial court's determination of whether a defense counsel had a conflict of interest is a deferential one, presenting a mixed question of law and fact; the Court will accept the trial judge's factual determinations, unless unsupported by the evidence, but will review legal conclusions de novo. *Alston v. United States*, 838 A.2d 320, 2003 D.C. App. LEXIS 750 (2003).

There is plain error where the jury instructions could have confused the jury on the need for a unanimous verdict, or the government's burden to prove guilty beyond a reasonable

doubt. *Bates v. United States*, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

Certain instructional errors, which touch upon fundamental constitutional principles or call into question the integrity of the verdict, will constitute plain error. *Bates v. United States*, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

Party asserting plain error bears the burden of first establishing error, a deviation from the legal rule, and second, demonstrating that the error was "plain," which is synonymous with "clear" or, equivalently, "obvious." *Bates v. United States*, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

Absent a clear showing of abuse of discretion, decisions of the trial court regarding the denial of a new trial will not be disturbed on appeal. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

In assessing whether counsel's performance was ineffective, appellate court reviews the record with a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Ultimate questions, such as whether the police had reasonable grounds to stop a suspect and conduct a search, require conclusions of law reviewed de novo. *James v. United States*, 829 A.2d 963, 2003 D.C. App. LEXIS 529 (2003).

Absent a showing otherwise, trial judges are presumed to know and apply the proper legal standards. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

On appeal, all reasonable inferences must be drawn in favor of the government, and deference must be given to the trier of fact's right to determine credibility and weigh evidence. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

In reviewing a decision by a trial court denying a defendant the right to call a witness, the first inquiry is whether the error amounts to the violation of a constitutional right. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

It is only where the government has produced no evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt that the appellate court can reverse a conviction. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Where it appears that a conviction is based upon an improper rule of law, the verdict must be set aside. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

On undisputed facts, the Court of Appeals may affirm for reasons other than those stated by the trial judge. *Wilson v. United States*, 802 A.2d 367, 2002 D.C. App. LEXIS 375 (2002).

Appellate court reviews the trial court's limitations on cross-examination for an abuse of discretion. *Velasquez v. United States*, 801 A.2d 72, 2002 D.C. App. LEXIS 314 (2002), *US Supreme Court certiorari denied by 537 U.S. 963, 123 S. Ct. 396, 154 L. Ed. 2d 319, 2002 U.S. LEXIS 7514, 71 U.S.L.W. 3265 (2002).*

In reviewing, under *Brady*, a trial judge's refusal to require the disclosure of impeachment evidence, Court of Appeals considers the importance of the witness to the government's case, the credibility of the witness, and the value of the withheld evidence in undermining the witness's credibility. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Trial judge in drug prosecution committed plain error when she continued to poll the jury after juror number five dissented from the verdict previously announced by the foreman. *Bennett v. United States*, 797 A.2d 1251, 2002 D.C. App. LEXIS 108 (2002).

Even in summary contempt proceedings, appellate court may not disturb trial court's findings unless they are without evidentiary support or plainly wrong. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

Individual errors, not warranting reversal, may when combined so impair the right to a fair trial to warrant reversal. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

Absent a clear showing of abuse of discretion, decisions of the trial court regarding the denial of a new trial will not be disturbed on appeal. *Whitley v. United States*, 783 A.2d 629, 2001 D.C. App. LEXIS 227 (2001), modified by 796 A.2d 26, 2002 D.C. App. LEXIS 77 (D.C. 2002).

The Court of Appeals is only inclined to reverse in extreme situations threatening a miscarriage of justice. *Whitley v. United States*, 783 A.2d 629, 2001 D.C. App. LEXIS 227 (2001), modified by 796 A.2d 26, 2002 D.C. App. LEXIS 77 (D.C. 2002).

Trial court's erroneous ex parte ruling that prosecution did not need to divulge to defense factual basis for government witness' possible bias, which was that witness' sons were under investigation for sexually abusing two of defendant's children, was not harmless, in prosecution for cruelty to children; witness' testimony as sole adult witness was significant, given that children expressed desire to be reunited with their siblings, there was evidence that children would lie at their mother's request, and children admitted that they had been instructed to testify against defendant in order to be reunited. *McCloud v. United States*, 781 A.2d 744, 2001 D.C. App. LEXIS 206 (2001).

Court of Appeals will reverse the denial of a motion to sever counts only upon a clear showing of abuse of discretion. *McCloud v. United*

States, 781 A.2d 744, 2001 D.C. App. LEXIS 206 (2001).

The Court of Appeals will reverse the trial court's denial of a motion for a mistrial only if it appears irrational, unreasonable, or so extreme that failure to reverse would result in a miscarriage of justice. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

When reviewing the denial of a defendant's motion for mistrial, the court looks to several factors, including the gravity of the misconduct, the relative strength of the government's case, the centrality of the issue affected, and any mitigating actions taken by the court, all the while giving due deference to the decision of the trial judge, who had the advantage of being present not only when the alleged misconduct occurred, but throughout the trial. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

Error in permitting government to present victim impact statements at juvenile disposition hearing without providing them to juvenile beforehand in predisposition report had no effect on disposition that committed juvenile to youth center for indeterminate period not to exceed his twenty-first birthday; disposition was authorized by statute and was warranted by gravity of 16-year-old juvenile's admission, in pleading guilty, to facts establishing that he carjacked vehicle while armed and assaulted and threatened to kill two correctional officers. *In re M.N.T.*, 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

Court of Appeals will reverse a trial court's ruling on a matter within its discretion when the trial court, while recognizing its right to exercise discretion, declines to do so, preferring instead to adhere to a uniform policy. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

A trial judge's "discretion" is the exercise of discretion in individual cases, not the discretion to adopt a uniform policy in all cases irrespective of circumstances. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

It is not the role of the Court of Appeals to review sentences which are within statutory limits. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Court of Appeals is authorized to reexamine the sentencing process where it is alleged that the judge totally failed to exercise her discretion in imposing sentence. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Appellate court will view the record in the light most favorable to the party that prevailed in the trial court, and it must sustain any reasonable inference that the trial judge has drawn from the evidence. *Pernell v. United*

States, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Appellate court can sustain a trial court ruling on any legitimate basis. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

No additional fact-finding was necessary for appellate court to rule on issue of whether officer's questioning of defendant fell within public safety exception to Miranda rule, which was ultimately question of law to be decided de novo by appellate court, and thus prosecutor was not precluded from arguing that questions fell within public safety exception, even though prosecutor did not specifically reference exception in trial court, where prosecutor did state in trial court that questioning was designed to ascertain threat to public safety, and defendant was unable to explain what testimony he would have elicited from officers regarding exception that he did not otherwise try to elicit. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Defendant was not prejudiced by the denial of a continuance of prosecution for first-degree sexual abuse and kidnapping, allegedly required to permit defense counsel to prepare adequately for trial and to allow defendant to consider a "combination" plea offer made by the government, where defendant obtained a de facto continuance of three months. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

The denial of a motion for a mistrial should be reversed only if the decision appears irrational, unreasonable, or so extreme that failure to reverse would result in a miscarriage of justice. *Parker v. United States*, 757 A.2d 1280, 2000 D.C. App. LEXIS 198 (2000).

Trial court's adoption, without alteration, of Government's submission with respect to defendant's motion to vacate murder conviction necessitated a more careful review by appellate court. D.C. Code 1981, §§ 22-2401 to 22-3202, 23-110. *Frederick v. United States*, 741 A.2d 427, 1999 D.C. App. LEXIS 277 (1999).

When reviewing trial court's denial of motion to vacate, appellate court should inquire whether trial court's reasoning is substantial and supports trial court's action. D.C. Code 1981, § 23-110. *Woodard v. United States*, 719 A.2d 966, 1998 D.C. App. LEXIS 202 (1998).

Ordinarily, Court of Appeals reviews denial of motion to vacate convictions for abuse of discretion; however, if trial court denied motion without hearing, Court must be able to conclude that under no circumstances could movant establish facts warranting relief in order to affirm the judgment below. D.C. Code 1981, § 23-110. *James v. United States*, 718 A.2d 1083, 1998 D.C. App. LEXIS 193 (1998).

It is only where government has produced no evidence from which reasonable mind might fairly infer guilt beyond reasonable doubt that reviewing court can reverse conviction. *Zanders v. United States*, 678 A.2d 556, 1996 D.C. App. LEXIS 122 (1996).

Appellate court will not disturb trial court's denial of a motion for mistrial except in extreme situations threatening a miscarriage of justice. *Smith v. United States*, 665 A.2d 962, 1995 D.C. App. LEXIS 201 (1995).

Review of discretionary ruling by trial court requires appellate court to make three-part determination: first, whether matter at issue was committed to court's sound discretion; second, whether trial court recognized that it had discretion and, if so, whether court purported to exercise that discretion; and third, whether record reveals sufficient facts upon which court based its decision. *Geddie v. United States*, 663 A.2d 531, 1995 D.C. App. LEXIS 159 (1995).

Although test of record underlying exercise of trial court's discretion tends to vary somewhat with nature of issue to be decided, generally factual record must be capable of supporting determination reached by trial court. *Geddie v. United States*, 663 A.2d 531, 1995 D.C. App. LEXIS 159 (1995).

Appellate court reviews decision denying motion for new trial for abuse of discretion and will not reverse as long as that denial is reasonable and supported by evidence in record. Criminal Rule 33. *Geddie v. United States*, 663 A.2d 531, 1995 D.C. App. LEXIS 159 (1995).

Standard by which Court of Appeals reviews trial court's denial of motion to vacate sentence or motion to withdraw guilty plea is the same, namely whether trial court abused its discretion in denying motion. D.C. Code 1981, § 23-110; Criminal Rule 32(e). *Johnson v. United States*, 633 A.2d 828, 1993 D.C. App. LEXIS 287 (1993).

Denial of motion to vacate sentence as procedurally barred is reviewed only for abuse of discretion. *Matos v. United States*, 631 A.2d 28, 1993 D.C. App. LEXIS 220 (1993).

If defendant's claims have been subject of hearing, reviewing court must defer to trial court's credibility determinations respecting witnesses who testify at hearing, and trial court's factual findings will not disturb them unless they lack support in record. *Johnson v. United States*, 616 A.2d 1216, 1992 D.C. App. LEXIS 281 (1992), writ of certiorari denied by 507 U.S. 996, 113 S. Ct. 1611, 123 L. Ed. 2d 172, 1993 U.S. LEXIS 2319, 61 U.S.L.W. 3652 (1993).

On appellate review of trial court's determination of whether defense counsel was ineffective, appellate court will be more deferential to those findings by trial judge which are facilitated by his presence in courtroom and his ability to observe the players firsthand; find-

ings based on documents or other writings merit little deference or none at all. U.S. Const. Amend. 6. *Byrd v. United States*, 614 A.2d 25, 1992 D.C. App. LEXIS 210 (1992).

On appeal from judgment of conviction, appropriate standard of review was whether there was sufficient evidence from which reasonable juror could fairly conclude guilt beyond reasonable doubt. *Garris v. United States*, 465 A.2d 817, 1983 D.C. App. LEXIS 455 (1983), writ of certiorari denied by 465 U.S. 1012, 104 S. Ct. 1013, 79 L. Ed. 2d 243, 1984 U.S. LEXIS 967, 52 U.S.L.W. 3551 (1984).

Defendant's opportunity to appeal from criminal conviction may not be ineffectuated by his poverty, by failure of trial court to inform defendant of that right, or by failure of counsel to file appeal upon request. (Per Nebeker, Associate J., with one Judge concurring in result.) U.S. Const. Amend. 6. *Hargett v. United States*, 380 A.2d 1005, 1977 D.C. App. LEXIS 303 (1977), writ of certiorari denied by 439 U.S. 932, 99 S. Ct. 324, 58 L. Ed. 2d 327, 1978 U.S. LEXIS 3624 (1978).

— Mootness, review.

Trial court lacked jurisdiction to consider defendant's postconviction claim of ineffective assistance of counsel and request to compel trial counsel to cooperate with appellate counsel, where claims were made in motion to vacate sentence that was filed after he had already served sentence, which did not satisfy in-custody requirement. *Jeffrey v. United States*, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

While vacation of a decision by a deciding appellate court is not compelled after final completion of proceedings before that court, it is appropriate for a court of appeals to vacate its own judgment if it is made aware of events that moot the case during the time available for further review, such as rehearing en banc. *Bryan v. United States*, 836 A.2d 581, 2003 D.C. App. LEXIS 692 (2003).

— Necessity of collateral attack, review.

To extent that prisoner's lawsuit, under Privacy Act, against United States Parole Commission (USPC) and Federal Bureau of Prisons ((BOP), for allegedly maintaining and/or relying on inaccurate records in denying prisoner's parole, was merely disguise for collateral attack on his conviction and sentence, prisoner's suit was barred by District of Columbia law, providing exclusive remedy for collateral challenges to convictions imposed by Superior Court for the District of Columbia, since prisoner failed to claim or demonstrate that relief under District of Columbia law was inadequate or ineffective to test legality of his conviction and detention. *Corley v. United States Parole*

Comm'n, 709 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 75893 (2009).

Client was collaterally estopped from litigating legal malpractice claim against counsel who represented him in state court criminal proceedings, where client had appealed state court convictions on basis of ineffective assistance of counsel, but convictions were affirmed. *Myles v. Polin*, 668 F.Supp.2d 65, 2009 U.S. Dist. LEXIS 104024 (2009).

A petitioner seeking to vacate his sentence shoulders the burden of sustaining his contentions by a preponderance of the evidence. *Douglas v. United States*, 245 F.Supp.2d 46, 2003 U.S. Dist. LEXIS 1761 (2003).

Defendant was not entitled to collateral review of challenge to denial of motion to suppress evidence that was raised and rejected on direct appeal. *Graham v. United States*, 895 A.2d 305, 2006 D.C. App. LEXIS 146 (2006).

"Procedural default rule," prohibiting the raising of a claim that was not raised during direct appeal from being raised in a collateral proceeding, is neither a statutory nor a constitutional requirement, but it is a doctrine adhered to by the courts to conserve judicial resources and to respect the law's important interest in the finality of judgments. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

The Court of Appeals reviews the trial judge's denial, without a hearing, of appellant's motion for collateral relief for abuse of discretion. *Alston v. United States*, 838 A.2d 320, 2003 D.C. App. LEXIS 750 (2003).

A claim not raised in a previous collateral attack is procedurally defaulted. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

When a defendant has failed to raise an available challenge to his conviction on direct appeal, he may not raise that issue on collateral attack unless he shows both cause for his failure to do so and prejudice as a result of his failure; when the defendant has already launched several collateral attacks on his conviction, the reasons supporting the application of the cause and prejudice test are even more compelling. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

A motion to attack sentence is not a substitute for a direct appeal. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Where a defendant has failed to raise an available challenge to his conviction on direct appeal, he may not raise that issue on collateral attack unless he shows both cause for his failure to do so and prejudice as a result of his failure. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

The court is not required to consider successive collateral attack motions raising issues

previously decided by the court. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

A motion to vacate sentence is not a substitute for direct review, and where a defendant has failed to raise an available challenge to his conviction on direct appeal, he may not raise that issue on collateral attack unless he shows both cause for his failure to do so and prejudice as a result of his failure. *Brown v. United States*, 795 A.2d 56, 2002 D.C. App. LEXIS 74 (2002).

A trial court's determination whether to appoint counsel to assist an indigent prisoner in pursuing a collateral attack of a conviction under the Criminal Justice Act is reviewed for abuse of discretion. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

If the trial court denies the motion for appointment of counsel, an indigent prisoner must obtain a final ruling on the merits of the collateral attack on his conviction before he may appeal an order denying appointment of counsel to assist in that effort; an appeal from denial of the motion for appointment of counsel will normally be denied for lack of jurisdiction. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Where record was insufficiently developed to permit appellate court to evaluate whether government had Brady obligation to disclose ongoing investigation of police officer who was key witness to drug transactions of which defendant had been convicted, further consideration of issue had to await filing by defendant of motion collaterally attacking his convictions, at which time defendant could raise questions requiring inquiry outside the trial record. D.C. Code 1981, § 23-110. *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

Evaluating claims of prosecutorial impropriety in closing argument is three-step process: first, Court of Appeals must determine whether any or all of challenged comments were improper; second step requires consideration of several other factors, in order to place impropriety in context, including gravity of impropriety, relationship to issue of innocence or guilt, and effect of specific corrective instructions, if any; and third step is determining degree of prejudice, which is usually most significant step. *Bowman v. United States*, 652 A.2d 64, 1994 D.C. App. LEXIS 250 (1994).

Unless defendant appeals from denial of motion to set aside convictions, only issues properly before Court of Appeals on direct appeal from conviction are those that defendant raises

on basis of record of trial. D.C. Code 1981, § 23-110. *Hall v. United States*, 559 A.2d 1321, 1989 D.C. App. LEXIS 116 (1989).

Where defendant contends that trial court should have raised issue of his sanity and competence to stand trial sua sponte, such contention should be advanced by a motion for new trial rather than on appeal. D.C. Code SCR, Criminal Rule 33; D.C. Code § 23-110. *Clyburn v. United States*, 381 A.2d 260, 1977 D.C. App. LEXIS 310 (1977), writ of certiorari denied by 435 U.S. 999, 98 S. Ct. 1656, 56 L. Ed. 2d 90, 1978 U.S. LEXIS 1660 (1978).

Although not required for any claim of ineffectiveness of counsel, raising of claim in motion for new trial or in motion attacking sentence is likely to be more productive than direct appeal, because proceeding will not be limited to evidence in the trial record. D.C. Code § 23-110; D.C. Code SCR, Criminal Rule 33. *Clyburn v. United States*, 381 A.2d 260, 1977 D.C. App. LEXIS 310 (1977), writ of certiorari denied by 435 U.S. 999, 98 S. Ct. 1656, 56 L. Ed. 2d 90, 1978 U.S. LEXIS 1660 (1978).

It would not be appropriate for the Court of Appeals to treat contention, based on material outside the record on appeal, that erroneous information was given at sentencing proceeding by the prosecution; such matter would be appropriate for motion to vacate or to reduce sentence, which could be filed in the trial court presently or after disposition of the appeal. D.C. Code § 23-110; D.C. Code SCR Criminal Rule 35(a). *Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

Subsequent conviction for narcotics trafficking of police officer who testified for government at defendants' trial did not render defendants' convictions subject to collateral attack under this section. *United States v. Muskelly*, 124 WLR 1577 (Super. Ct. 1996).

Although a prerequisite to collateral relief under this section is that the petitioning defendant be "in custody," there is no converse prerequisite to coram nobis relief that the defendant not be "in custody." *United States v. Hamid*, 113 WLR 2481 (Super. Ct. 1985).

Defendant assumes a heavy burden of proof when he seeks to vacate or set aside his sentence under this section: To prevail on collateral attack, he must show a fundamental defect which inherently results in a complete miscarriage of justice. *United States v. Hamid*, 113 WLR 2481 (Super. Ct. 1985).

— Plain error, review.

Trial court committed plain error, warranting new trial, by: (1) not immediately sending jury back for further deliberations, with instructions that it was not to consider punish-

ment in determining guilt or innocence, when it saw initial verdict form stating that defendant was technically guilty, with a notation that defendant did not violate the law in spirit; (2) failing to grant mistrial when jurors called into question jury's verdict by continuing to try to explain to judge their view of the matter, thus raising specter of compromise verdict; and (3) continuing to advise jury that court would consider its sentencing recommendation, without re-advising jury that its recommendation would not be binding on court. *Headspeth v. United States*, 910 A.2d 311, 2006 D.C. App. LEXIS 578 (2006).

— Record, review.

Where the existing record provides an adequate basis for disposing of a motion attacking sentence, the trial court may rule on the motion without holding an evidentiary hearing. *Jones v. United States*, 918 A.2d 389, 2007 D.C. App. LEXIS 105 (2007).

Appellate court was not precluded from reviewing defendant's ineffective assistance claims presented in motion to vacate sentence as part of direct appeal, as long as review was confined to record. *Jeffrey v. United States*, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

Even assuming that requirement that every judgment be set forth on a separate document, contained in Superior Court rule governing civil appeals, applied to trial court's order denying petitioner's motion for post-conviction relief, trial court's transcribed ruling adequately satisfied its purposes and could serve as equivalent of such a statement; trial court made detailed oral findings that were recorded and transcribed, and stated that "the court's oral reasoning in support of its rulings will be part of the transcript of these proceedings." *Williams v. United States*, 878 A.2d 477, 2005 D.C. App. LEXIS 334 (2005), writ of certiorari denied by 551 U.S. 1138, 127 S. Ct. 2988, 168 L. Ed. 2d 715, 2007 U.S. LEXIS 7835, 75 U.S.L.W. 3678 (2007).

Court of Appeals will reverse a trial court's grant of a motion to correct the trial record only if the trial court's factual finding that the record required correction was clearly erroneous. *Jenkins v. United States*, 870 A.2d 27, 2005 D.C. App. LEXIS 39 (2005).

In answering question of whether defendant was in custody for Miranda purposes, Court of Appeals was obliged to view record in the light most favorable to sustaining trial court's ruling denying defendant's motion to suppress evidence; given absence in record of express findings of fact by trial court, this means that Court of Appeals had to determine if denial of motion to suppress was supportable under any reasonable view of the evidence. *Morales v. United States*, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

The fact that the two appeals were consolidated does not necessarily make the record on appeal in one case a part of the record on appeal of the other. *Outlaw v. United States*, 854 A.2d 169, 2004 D.C. App. LEXIS 387 (2004).

Defendant could not prevail on his claim that probation revocation order should be reversed because, during revocation hearing, trial judge received information during ex parte discussion with justice who was presiding over defendant's misdemeanor sex abuse case, given that defendant failed to secure a statement of proceedings and evidence to complete the record of what transpired at the probation revocation hearing, and likewise, defendant could not prevail on his challenge to revocation of his probation because a portion of the revocation proceeding was not recorded and transcribed. *Outlaw v. United States*, 854 A.2d 169, 2004 D.C. App. LEXIS 387 (2004).

Where there is an incomplete transcript and appellant claims that a specific trial error merits reversal, appellate court will not consider the substance of appellant's representations about the alleged error, unless the transcript supports those representations or the appellant has made efforts to supplement the record. *Outlaw v. United States*, 854 A.2d 169, 2004 D.C. App. LEXIS 387 (2004).

Although claims of prosecutive error are directed to the prosecutor's argument, it is the appellate court's function to review the record for legal error or abuse of discretion by the trial court, rather than by counsel, in ruling or failure to intervene when circumstances require it. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

The appellant has the duty to present the Court of Appeals with a record sufficient to show affirmatively that error occurred. *Bellamy v. United States*, 810 A.2d 401, 2002 D.C. App. LEXIS 663 (2002).

A judgment of any trial court is presumed to be valid, and a losing party who notes an appeal from such a judgment bears the burden of convincing the appellate court that the trial court erred; in meeting that burden, it is the appellant's duty to present appellate court with a record sufficient to show affirmatively that error occurred. *Bell v. United States*, 806 A.2d 228, 2002 D.C. App. LEXIS 512 (2002).

Court of Appeals will permit convictions to stand in cases where a fair review on appeal has not been frustrated by lack of evidence in the record. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Affidavits filed by prisoner on appeal from summary dismissal of prisoner's motion to vacate sentence, the contents of which were not considered by trial court in ruling on prisoner's motion, would not be considered on appeal. D.C. Code § 23-110. *Pettaway v. United States*,

390 A.2d 981, 1978 D.C. App. LEXIS 402 (1978).

— Remand, review.

Order that denied without a hearing a motion to vacate convictions on basis of alleged ineffective assistance of counsel would be vacated and case remanded with instructions to hold evidentiary hearing on the merits of motion; motion was not procedurally barred as found by motions court, it did not contain vague and conclusory allegations or palpably incredible claims, defendant had never had a decision on merits of his complaints about trial counsel, and record did not satisfy appellate court that under no circumstances could defendant establish facts warranting relief. *Hardy v. United States*, 988 A.2d 950, 2010 D.C. App. LEXIS 33 (2010).

Remand was required for trial court to reconsider defendant's claim in his postverdict motions to vacate that his murder confession to a witness was obtained in violation of his Sixth Amendment right to counsel; trial court denied motions on ground that witness was not a government agent, government disclosed for first time on appeal that, in addition to repeated debriefings between witness and government in which witness conveyed incriminating information about multiple individuals, witness had told government that he had seen defendant murder before and was aware that defendant was in jail for killing victim of charged offense, and thus trial court had been unaware of all facts relevant to issue. *Watson v. United States*, 940 A.2d 182, 2008 D.C. App. LEXIS 12 (2008).

Record was insufficient to determine whether any corroborating circumstances indicated trustworthiness of witness's oral jailhouse confession to defendant's attorney, for purposes of determining whether confession was admissible under hearsay exception for statements against penal interest, and thus, remand was warranted. *Ingram v. United States*, 885 A.2d 257, 2005 D.C. App. LEXIS 533 (2005).

Remand to vacate two of defendant's murder convictions was required, where defendant was convicted of premeditated murder and two counts of felony murder based on the same killing. *Jacobs v. United States*, 861 A.2d 15, 2004 D.C. App. LEXIS 582 (2004), vacated by 886 A.2d 510, 2005 D.C. App. LEXIS 545 (D.C. 2005).

Remand was required for determination as to whether defendant made timely request to his appellate counsel to note appeal from denial of his second motion for post-conviction relief, thus entitling him to have trial court's order denying second motion for post-conviction relief vacated and re-entered, which remedy would allow defendant to note timely appeal. *Pearsall*

v. United States, 859 A.2d 634, 2004 D.C. App. LEXIS 458 (2004).

After trial court abused its discretion in denying defendant's motion to reinstate counsel, remand was necessary to determine if defendant's former counsel was willing and able to re-enter the case at the time defendant moved to reinstate him after the conflict of interest that had originally disqualified him had been resolved; if counsel was not able to re-enter the case, then the defendant's right to counsel was not violated and his convictions must stand, but if counsel was able to re-enter the case, defendant's convictions were required to be vacated and he was entitled to a new trial. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Determination of whether arrestee had made prima facie showing to support motion for sealing record of arrest would have to be made on remand, where trial court's error in treating arrestee's motion as conceded prevented District from opposing arrestee's motion. *District of Columbia v. Houston*, 842 A.2d 667, 2004 D.C. App. LEXIS 55 (2004).

Remand for resentencing was required, where the State violated defendant's plea agreement by failing to recommend the sentence agreed upon by both parties, by emphasizing the seriousness of defendant's offenses, by referring to the fact that the court was not bound by the plea agreement, and by requesting that the court "impose a sentence that reflects the seriousness of this particular offense." *Byrd v. United States*, 801 A.2d 28, 2002 D.C. App. LEXIS 304 (2002).

If the trial court indicates a willingness to modify the sentence after an appeal is noted, the proper course for the Court of Appeals is to remand the case so that the trial court can amend the sentencing order. *Bell v. United States*, 790 A.2d 523, 2002 D.C. App. LEXIS 9 (2002).

On remand of felony murder case, defendant was not entitled to have resentencing occur before a different judge, as he made no claim of actual or apparent bias by the trial judge who heard the evidence and was therefore presumptively best equipped to exercise sentencing discretion, and he did not provide any reason to establish a doubt that the judge would exercise that discretion conscientiously and in accordance with the law. *Keels v. United States*, 785 A.2d 672, 2001 D.C. App. LEXIS 243 (2001).

When a convicted defendant entitled to representation under the Criminal Justice Act appeals his conviction, and while the direct appeal is pending appointed counsel files a motion for postconviction relief, counsel has the statutory duty to take the steps necessary to effect an appeal requested by the defendant from the denial of that motion, and failure to fulfill this duty requires that the order of denial

be vacated and re-entered so that an appeal may be properly noted; overruling *Lee v. United States*, 597 A.2d 1333. *Williams v. United States*, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

If, on remand for Frendak inquiry into whether defendant voluntarily and intelligently waived an insanity defense, trial court ordered a productivity examination, defendant cooperated, and court concluded as a result that defendant's actions at time of crime may have been product of insanity, court would have discretion to order a new insanity phase of the trial. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

Trial court would have discretion, on remand for Frendak inquiry into whether defendant voluntarily and intelligently waived insanity defense, to order psychiatric evaluations to resolve defendant's capacity for waiving that defense. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

If, on remand for Frendak inquiry, trial court concluded that defendant made a voluntary and intelligent decision at the time of trial to waive an insanity defense, that would end the matter and conviction would stand. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

If, on remand for Frendak inquiry into whether defendant voluntarily and intelligently waived an insanity defense, trial court concluded that defendant did not make such a waiver, then the court would be required to determine whether defendant presently wished to waive the insanity defense, and if he did not, or was presently incapable of making a voluntary and intelligent decision, court should order a productivity examination to determine whether there was sufficient evidence for an insanity defense. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

That the evidence was insufficient to establish that defendant possessed drugs within 1,000 feet of a school did not require acquittal of conviction for possession with intent to distribute cocaine while armed in a drug free zone; rather, proper course would be to vacate the conviction and sentence, re-enter judgment for possession with intent to distribute cocaine, and remand for resentencing. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Remand to trial court of armed premeditated murder case was required in order for it to make findings of fact and to apply Brady standard to defendant's contentions that prosecution failed to disclose that it engaged in suggestive conduct during sole eyewitness's pretrial identification of defendant, that it improperly paid eyewitness on 10 to 20 occasions to appear at prosecution's office, and that a prosecutor loaned eyewitness \$100. *Gaither v. United*

States, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

That prosecution's sole eyewitness was on drugs during the incident and at trial, that eyewitness falsely testified about where he saw the bullets hit the victim, that eyewitness illegally obtained duplicate witness payment vouchers, and that he lied to the trial judge concerning his tardiness at trial, which he claimed resulted from a threat by defendant against his niece, was impeachment evidence not of a nature that acquittal would likely result from its use, and thus, remand to trial court of armed premeditated murder case was not required for findings on defendant's motion for new trial on the alleged newly discovered evidence. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

Denial of defendant's motion for new trial of armed robbery case was properly before the Court of Appeals for review; case was twice remanded to the trial court to determine admissibility of voice exemplars proffered by defendant, and defendant's contention was that police's tape of the robbery was improperly admitted on ground he was not allowed to submit his own tape for comparison purposes, and this argument was not available until after the trial court's order on second remand. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

Remand was appropriate for determination of admissibility of extrinsic evidence proffered under reverse Drew/Winfield theory to show that someone other than defendant committed recent robbery that was similar to charged robbery; trial court excluded evidence under mistaken belief that it lacked discretion to admit it, and thus did not exercise the discretion to which parties were entitled, and Court of Appeals did not have benefit of trial court's perceptions about reliability of proffer. *Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Unless on a particular record trial judge would have but one option, Court of Appeals must remand for reconsideration of erroneous ruling under the proper standard. *Newman v. United States*, 705 A.2d 246, 1997 D.C. App. LEXIS 189 (1997).

Where record was insufficiently developed to permit appellate court to evaluate whether government had Brady obligation to disclose police statements and six-page citizen's complaint made by potentially key witness, record would be remanded to trial court for hearing and determination of issue. *Farley v. United*

States, 694 A.2d 887, 1997 D.C. App. LEXIS 113 (1997).

Motion judge's failure to make finding as to believability of counsel's testimony that he made tactical decision not to object to admission of police officer's testimony regarding portion of defendant's incriminating statement which was not provided in discovery required remand for findings of fact and conclusions of law, on defendant's ineffective assistance of counsel claim, with regard to whether defense counsel's performance was constitutionally deficient in failing to object, and whether defendant was prejudiced. *U.S. Const. Amend. 6. Quallis v. United States*, 654 A.2d 1281, 1995 D.C. App. LEXIS 41 (1995).

In absence of trial counsel's testimony or statement on record about pretrial preparation, neither reversal nor affirmance was warranted based on status judge's failure to allow defendant to fully express his desire for different trial counsel; rather, remand was required in order to afford government opportunity to demonstrate that trial counsel's pretrial preparation was adequate. *Matthews v. United States*, 629 A.2d 1185, 1993 D.C. App. LEXIS 179 (1993).

In cases where convictions on some but not all counts of multiple-count indictment are vacated on appeal, Court of Appeals may remand case to trial court for resentencing on remaining convictions, so as not to upset interdependent sentencing structure; as long as total length of new sentence on remaining counts does not exceed total length of defendant's previous sentence on all counts, including those overturned, and there is no other evidence of any retaliatory motive, such resentencing offends neither due process nor double jeopardy clause. *U.S. Const. Amends. 5, 14. Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

In light of Government's letter to chief judge of superior court and to defendant's counsel, pointing out that length of sentence imposed on defendant for unlawful possession of a pistol was unauthorized because defendant had not previously been convicted under that section, case was remanded to trial court for further proceedings to correct sentence. *D.C. Code § 22-3203. Smith v. United States*, 414 A.2d 1189, 1980 D.C. App. LEXIS 290 (1980).

— Reservation of grounds for review, generally.

Defendant waived for appellate review claim that his unpaid fine, which was imposed pursuant to the Victims of Violent Crime Compensation Act of 1981, rendered him "in custody" within the meaning of statute governing remedies on motion attacking sentence, where he did not raise the claim in the trial court. *Mitch-*

ell v. United States, 977 A.2d 959, 2009 D.C. App. LEXIS 345 (2009).

Defendant preserved for appellate view his claim that trial court erred in failing to dismiss his indictment on ground of prosecutorial misconduct, specifically that government had obligation to offer witness limited immunity in order to assess whether to grant him use immunity, that its failure to do so prejudiced his defense, and that, therefore, trial court's failure to sanction government denied him a fair trial; it was clear what action defense counsel desired trial court to take and grounds therefor, given extensive discussion on immunity and defense counsel's comments that prosecutor's conduct in failing to immunize witness was unreasonable and hence unlawful. *Butler v. United States*, 890 A.2d 181, 2006 D.C. App. LEXIS 2 (2006).

Questions not properly raised and preserved during the proceedings under examination, and points not asserted with sufficient precision to indicate distinctly the party's thesis, will normally be spurned on appeal. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App. LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

Court of Appeals would not consider on appeal those arguments set forth in inmate's brief on appeal from denial of his motion to vacate sentence that inmate had not presented to trial court. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

To establish sufficient cause for failing to assert his current claims in his previous motion to vacate sentence, prison inmate must show that he was prevented by exceptional circumstances from doing so. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

Defendant preserved for appellate review his claim that foundational predicate was required for jury instruction that government had no duty to photograph alleged drug activity or to take fingerprints to corroborate other evidence in drug case, where defendant objected to instruction on grounds that government lacked foundation for instruction because it had not affirmatively shown that police officers in question were under no obligation to collect such corroborative evidence. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

Defendant's severance arguments on appeal relating to events that developed during trial would be reviewed only for plain error, where he did not renew his pretrial motion for severance during trial. *Hammond v. United States*, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

Where there was no objection at trial to the prosecutor's alleged improper comments, the Court of Appeals may reverse only if the trial court's failure, sua sponte, to intervene and to prevent the misconduct so clearly prejudiced the appellant's substantial rights as to jeopardize the fairness and integrity of his trial. *McNeely v. United States*, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

Parties on appeal are not limited to the precise arguments they made below in support of their claims, and even if a claim was not pressed below, it properly may be addressed on appeal so long as it was passed upon. *Abdus-Price v. United States*, 873 A.2d 326, 2005 D.C. App. LEXIS 204 (2005).

In the absence of a timely objection to alleged error at trial, a conviction may be reversed only for plain error, which contemplates a clear showing of a miscarriage of justice. *McClain v. United States*, 871 A.2d 1185, 2005 D.C. App. LEXIS 154 (2005).

Court of Appeals would not specifically address on appeal of denial of defendant's motion to withdraw his guilty pleas argument that comparing defendant and his plea agreement to other defendants that were sentenced as result of same drug investigation had added effect of urging sentencing court to disregard plea agreement as it had done in other cases already sentenced, as record did not contain any information about other defendants' plea agreements or their sentences, and government's reference to other defendants during defendant's plea hearing was made in attempt to explain its allocution, which it had a right to do. *McClain v. United States*, 871 A.2d 1185, 2005 D.C. App. LEXIS 154 (2005).

Court of Appeals would review for plain error defendant's claim that trial judge had been biased against him, in prosecution for distribution of cocaine, as all but one of the instances of alleged bias occurred before defendant was sentenced, and no claim of bias had been asserted at sentencing. *Plummer v. United States*, 870 A.2d 539, 2005 D.C. App. LEXIS 138 (2005).

A litigant may not assert one theory at trial and another theory to the appellate court. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

Defendant's pretrial objection to evidence of crime for which defendant was not on trial, arguing that government had not demonstrated existence of the other crime by clear and convincing evidence, failed to preserve for review issue of whether government's cross-examination of defendant regarding other crime was improper due to government's failure to fulfill its proffer and demonstrate commission of crime by clear and convincing evidence; after trial court permissibly ruled that government's proffer, once fulfilled, would be clear and convincing, defendant was required to alert court if such proffer, in fact, had not been satisfied in order to request that trial court prohibit government from questioning defendant regarding other crime. *Anderson v. United States*, 857 A.2d 451, 2004 D.C. App. LEXIS 425 (2004).

A claim not argued in the appellant's brief is waived. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

If the party in a criminal proceeding has not preserved the issue by an adequate and timely objection, the Court of Appeals reviews the issue for plain error, or error so clearly prejudicial to substantial rights that the fairness and integrity of the trial was jeopardized. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

For an objection in a criminal proceeding to be considered timely, and thus preserved for appellate review, the objection must permit the trial court to take appropriate and effective corrective action. *Ebron v. United States*, 838 A.2d 1140, 2003 D.C. App. LEXIS 755 (2003), writ of certiorari denied by 543 U.S. 939, 125 S. Ct. 347, 160 L. Ed. 2d 247, 2004 U.S. LEXIS 6901, 73 U.S.L.W. 3236 (2004).

Generally, an assertion of an issue without argument or authority will not be considered on appeal. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

To invoke plain error exception to rule that constitutional claims not made in trial court are ordinarily unreviewable on appeal, appellant must show that the alleged error is obvious and so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the proceeding. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Court of Appeals deviates from general rule that constitutional claims not made in trial court are ordinarily unreviewable on appeal

only in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Constitutional claims not made in the trial court are ordinarily unreviewable on appeal. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Murder defendant's failure to object to trial court's reinstruction after jury sent its second note asking for clarification of the term "premeditation" meant that he could only prevail on his claim that reinstruction was erroneous by demonstrating plain error so clearly prejudicial to substantial rights as to jeopardize very fairness and integrity of trial. *Bates v. United States*, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

Defendant waived claim on direct appeal that conviction for possession of marijuana was barred under Tenth Amendment, where she failed to challenge validity of indictment before trial. *Emry v. United States*, 829 A.2d 970, 2003 D.C. App. LEXIS 530 (2003), writ of certiorari denied by 540 U.S. 1094, 124 S. Ct. 970, 157 L. Ed. 2d 803, 2003 U.S. LEXIS 9282, 72 U.S.L.W. 3407 (2003).

Defendant's argument that introduction of evidence that co-defendant had previously been seen with gun was prejudicial to defendant was not raised as grounds for severing murder trial, nor did defendant object to admissibility of gun evidence on that ground during trial, and thus argument would be reviewed for plain error on appeal. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

If claim of prosecutive error was not preserved in the trial court, appellate court reviews for plain error. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Grounds not raised in trial court will not require reversal on appeal, absent plain error. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Court of Appeals would review for plain error defendant's challenge to jury instruction on intent element of offense of cruelty to children, which challenge was not raised in the trial court. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

When no objection is made during trial to alleged defects in indictment, appellate court's review is limited to determining (1) whether the indictment sets forth the elements of the offense, and (2) if so, whether the claimed flaw prejudiced the defense. *Persall v. United*

States, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

A defendant who fails to object to an error in an indictment in a pre-trial motion waives the right to challenge the indictment on appeal unless it is so deficient as to be totally lacking in the statement of offense. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

It is policy of Court of Appeals not to consider arguments raised for the first time in a reply brief. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Court of Appeals would only review defendant's claim that trial court mishandled juror, who slept through portions of trial, for plain error, where defendant acquiesced to judge's handling of matter. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Trial court's decision to watch juror that two state attorneys claimed slept through substantial portion of second day of murder trial and missed essential testimony, rather than conduct an inquiry to determine whether juror was in fact sleeping through testimony, did not prejudice defendant, and thus did not constitute plain error, even though a direct inquiry into issue was required under circumstances, where juror slept through portions of state's case, and defendant was convicted of voluntary manslaughter rather than first degree murder. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

To obtain reversal on the ground of plain error, an appellant must show: (1) that there is error; (2) that the error is plain; (3) that it affects substantial rights; and (4) that it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Bellamy v. United States*, 810 A.2d 401, 2002 D.C. App. LEXIS 663 (2002).

Questions not properly raised and preserved during the proceedings under examination, and points not asserted with sufficient precision to indicate distinctly the party's thesis, will normally be spurned on appeal. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Defendant failed to preserve for appellate review his claim that \$100 fine was an impermissible additional penalty for his original

crime of theft, in prosecution for contempt for failure to pay \$100 fine and \$50 in court costs, where defendant failed to raise issue at contempt hearing. *Bell v. United States*, 806 A.2d 228, 2002 D.C. App. LEXIS 512 (2002).

Absent exceptional circumstances, a party may not raise an issue on appeal that was not raised in the trial court. *Bell v. United States*, 806 A.2d 228, 2002 D.C. App. LEXIS 512 (2002).

Where a defendant does not preserve an objection, an appellate court reverses only for plain error, i.e., if the misconduct so clearly prejudiced the defendant's substantial rights as to jeopardize the fairness and integrity of his trial. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

An appropriate objection or motion at the bench at the conclusion of the prosecutor's presentation is sufficient to preserve a point for appeal. *Chatmon v. United States*, 801 A.2d 92, 2002 D.C. App. LEXIS 359 (2002).

Chinese defendant's failure to raise in the trial court or on direct appeal alleged difficulties with the interpreters' Mandarin dialects procedurally barred them from raising the claim in motions to vacate sentences; they offered only counsel's conclusory assertions that they may not have known that they were entitled to a translation in their particular dialect of the Chinese language. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Where a defendant fails to raise available challenges in his direct appeal, he may not raise that issue on collateral attack unless he shows cause for his failure to do so and prejudice as a result of his failure. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Questions not properly raised and preserved during the proceedings under examination, and points not asserted with sufficient precision to indicate distinctly the party's thesis, will normally be spurned on appeal. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Under the plain error test, before an appellate court can correct an error not raised at trial, there must be (1) error, (2) that is plain, and (3) that affects substantial rights, and if all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

By making general motion at close of all evidence for judgment of acquittal, defendant in prosecution for simple assault preserved for appellate review her claims that misdemeanor simple assault statute did not apply at all to

assaults by parents on their own children and that, assuming applicability of statute to such assaults, government was required to prove parent acted with malice in order to overcome "parental discipline" defense; each claim was in reality a challenge to sufficiency of evidence to sustain conviction. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Even though a general motion for acquittal is broadly stated, without specific grounds, it is deemed sufficient to preserve the full range of challenges to the sufficiency of the evidence. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

If the defense fails to make even a general motion for a judgment of acquittal in a jury trial, then the plain error test will govern review of the sufficiency of the evidence on appeal. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Pro se defendant's claim that the trial court imposed multiple punishments for a single offense in violation of the Double Jeopardy Clause was a claim that his sentence was illegal, and was a claim that properly was made in a motion to correct an illegal sentence, and court would review it as such, even though defendant did not cite rule governing illegal sentences in his motion to vacate sentence. *Brown v. United States*, 795 A.2d 56, 2002 D.C. App. LEXIS 74 (2002).

Motion to correct an illegal sentence should be considered without regard to cause and prejudice showing normally required for a defaulted claim in a motion to vacate sentence. *Brown v. United States*, 795 A.2d 56, 2002 D.C. App. LEXIS 74 (2002).

Where defendant does not object at trial on the ground on which he subsequently sought to appeal, in order to secure reversal on appeal, he is required to overcome the substantial hurdle of plain error review, and thus, in addition showing plain error, defendant must show that the error complained of was so clearly prejudicial to his substantial rights as to jeopardize the very fairness and integrity of trial. *Burgess v. United States*, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

Where the defendant has failed to object, Court of Appeals will reverse his conviction only if prosecutor's misconduct so clearly prejudiced his substantial rights as to jeopardize the fairness and integrity of his trial. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Questions not properly raised and preserved during the proceedings under examination, and points not asserted with sufficient precision to indicate distinctly the party's thesis, will normally be spurned on appeal. *Cannon v.*

Igborzurkie, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

Where defendant failed to object to prosecution's closing argument, Court of Appeals could consider only whether prosecution's alleged missteps therein amounted to plain error affecting substantial rights. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

Defendant preserved Fifth Amendment right to counsel claim arising from his decision, after comments from a detective, to change his initial refusal to give statement without a lawyer; motion to suppress statement declared that defendant did not knowingly, intelligently, and voluntarily waive Miranda rights, trial court made specific findings on right to counsel issue, alleged waiver of rights, and voluntariness, and it stated legal principle from *Edwards v. Arizona* that once a person asks for lawyer, police officers cannot ask any more questions without obtaining lawyer. *Tindle v. United States*, 778 A.2d 1077, 2001 D.C. App. LEXIS 172 (2001).

The Court of Appeals does not consider arguments raised for the first time in a reply brief. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Reviewing court must decide, with respect to allegedly improper statements by prosecutor to which no timely objection was made, whether the judge committed plain error by failing to intervene, sua sponte, to correct or strike any erroneous or improper argument. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

Party may not take one position in trial court, and another on appeal; Court of Appeals will not consider such claims on appeal. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Where party does not object during trial, Court of Appeals reviews for plain error. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari de-

nied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Where defendant did not request severance of offenses before trial court, Court of Appeals would review only for plain error. *Fields v. United States*, 698 A.2d 485, 1997 D.C. App. LEXIS 194 (1997), writ of certiorari denied by 523 U.S. 1012, 118 S. Ct. 1203, 140 L. Ed. 2d 331, 1998 U.S. LEXIS 1768, 66 U.S.L.W. 3592 (1998).

Government's failure in trial court to raise argument that challenge to sentence should have been raised on direct appeal justified decision not to consider argument on appeal from denial of motion to vacate sentence. *Coleman v. United States*, 628 A.2d 1005, 1993 D.C. App. LEXIS 175 (1993).

Defendant failed to preserve for appellate review issue that restitution order was not sufficiently detailed where defendant failed to raise issue in timely motion for correction or reduction of sentence filed within 120 days of sentencing. D.C. Code 1981, §§ 16-711, 23-110. *Holland v. United States*, 584 A.2d 13, 1990 D.C. App. LEXIS 317 (1990).

Defendant could not argue for first time on appeal that District of Columbia felony-murder statute was unconstitutional. D.C. Code 1981, § 22-2401. *Garris v. United States*, 465 A.2d 817, 1983 D.C. App. LEXIS 455 (1983), writ of certiorari denied by 465 U.S. 1012, 104 S. Ct. 1013, 79 L. Ed. 2d 243, 1984 U.S. LEXIS 967, 52 U.S.L.W. 3551 (1984).

Court of Appeals is not bound to decide constitutional challenges not raised below unless it can say that statute is so clearly unconstitutional that it should have been ruled upon by trial court despite failure of appellant to raise point below. *Garris v. United States*, 465 A.2d 817, 1983 D.C. App. LEXIS 455 (1983), writ of certiorari denied by 465 U.S. 1012, 104 S. Ct. 1013, 79 L. Ed. 2d 243, 1984 U.S. LEXIS 967, 52 U.S.L.W. 3551 (1984).

Contention that defendant was denied effective assistance of counsel by trial counsel's failure to challenge at trial and on appeal sufficiency of evidence to support robbery conviction on theory that fruit of robbery was property of corporation and Government failed to establish as essential element of proof its corporate existence, which contention was not raised at trial, on direct appeal, nor on motion to vacate sentence, was not properly before Court of Appeals on appeal from denial of motion to vacate sentence. D.C. Code § 23-110. *Atkinson v. United States*, 366 A.2d 450, 1976 D.C. App. LEXIS 434 (1976).

— Standard of review.

Proper standard for review of District of Columbia prisoner's collateral attack on malice instruction in first-degree murder prosecution

was not "plain error" but "cause and actual prejudice." 18 U.S.C. § 2255; Fed. Rules Cr. Proc. Rule 52(b), 18 U.S.C.; D.C. Code 1981, §§ 22-2401, 22-2403. *U.S. v. Frady*, 102 S.Ct. 1584, 1982 U.S. LEXIS 95 (U.S. Dist. Col. 1982).

Plain error rule merely restates existing law and was intended to afford a means for the prompt redress of miscarriages of justice. Fed. R. Cr. Proc. Rule 52(b), 18 U.S.C. *U.S. v. Frady*, 102 S.Ct. 1584, 1982 U.S. LEXIS 95 (U.S. Dist. Col. 1982).

Power granted by the plain error rule is to be used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result. Fed. R. Cr. Proc. Rule 52(b), 18 U.S.C. *U.S. v. Frady*, 102 S.Ct. 1584, 1982 U.S. LEXIS 95 (U.S. Dist. Col. 1982).

Although the "plain error" standard is not to be utilized by district court on collateral review of original criminal trial, a Court of Appeals can invoke the "plain error" standard on direct review of a district court's conduct of the Section 2255 hearing. 18 U.S.C. § 2255; Rules Governing § 2255 Cases, Rule 12, 18 U.S.C.; Fed. R. Cr. Proc. Rule 52(b), 18 U.S.C. *U.S. v. Frady*, 102 S.Ct. 1584, 1982 U.S. LEXIS 95 (U.S. Dist. Col. 1982).

Court of Appeals reviews the denial of motion for postconviction relief for an abuse of discretion. *Ransom v. United States*, 947 A.2d 1127, 2008 D.C. App. LEXIS 223 (2008).

An appellate court reviews the denial of a motion for postconviction relief for an abuse of discretion. *Rivera v. United States*, 941 A.2d 434, 2008 D.C. App. LEXIS 20 (2008).

Under plain error standard, to warrant reversal, defendant must show that the error resulted in a miscarriage of justice or that the trial court's error seriously affected the fairness, integrity or public reputation of judicial proceedings. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

An appellate court reviews a denial of motion for postconviction relief for abuse of discretion. *Cade v. United States*, 898 A.2d 349, 2006 D.C. App. LEXIS 209 (2006).

The Court of Appeals reviews claims of merger of convictions de novo to assess whether a violation of the Double Jeopardy Clause of the Constitution has occurred. *Cullen v. United States*, 886 A.2d 870, 2005 D.C. App. LEXIS 625 (2005).

In reviewing a challenge to the legality of a traffic stop, the Court of Appeals defers to the trial judge's material factual findings, but it reviews the ultimate legal conclusion de novo. *Cullen v. United States*, 886 A.2d 870, 2005 D.C. App. LEXIS 625 (2005).

Whether or not a hearing is held in connection with a motion to seal, a trial court's determinations in connection with that motion constitute findings of fact and are reviewed for clear error. *Sepulveda-Hambor v. District of*

Columbia, 885 A.2d 303, 2005 D.C. App. LEXIS 530 (2005).

A trial judge's determination that a declarant's admission of guilt is sufficiently trustworthy to warrant its admission as a statement against penal interest is reviewed under the "clearly erroneous" standard. *Sepulveda-Hambor v. District of Columbia*, 885 A.2d 303, 2005 D.C. App. LEXIS 530 (2005).

An appellate court reviews the trial court's decision granting or denying a petition for writ of error coram nobis for an abuse of discretion. *Butler v. United States*, 884 A.2d 1099, 2005 D.C. App. LEXIS 513 (2005).

Under plain error standard of review, the appellate court will reverse only if the defendant's substantial rights were so clearly prejudiced as to jeopardize the fairness of the trial. *Butler v. United States*, 884 A.2d 1099, 2005 D.C. App. LEXIS 513 (2005).

In reviewing whether an indictment has been constructively amended, the appellate court's standard of review requires it to consider whether the government at trial relied on a complex of facts distinctly different from that which the grand jury set forth in the indictment, rather than a single set of facts common to both. *Butler v. United States*, 884 A.2d 1099, 2005 D.C. App. LEXIS 513 (2005).

Plain-error review permits the Court of Appeals to grant a remedy where (1) there is error, (2) the error is "plain," meaning clear or obvious, and (3) the error affected substantial rights. *Adams v. United States*, 883 A.2d 76, 2005 D.C. App. LEXIS 469 (2005).

When reviewing a trial court's decision to limit a defendant's cross-examination, the standard of review employed will depend upon the scope of cross examination permitted by the trial court measured against an assessment of the appropriate degree of cross examination necessitated by the subject matter thereof as well as the other circumstances that prevailed at trial. *Adams v. United States*, 883 A.2d 76, 2005 D.C. App. LEXIS 469 (2005).

If the Court of Appeals elects to review the record sua sponte for plain error, even though the government failed to allege plain error review, the review should err, if at all, on the side of the criminal defendant. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

Error in trial court's use of outdated version of jury instruction on reasonable doubt, which failed to inform jury that it would find reasonable doubt based on lack of evidence, did not lead to miscarriage of justice requiring reversal of drug convictions on plain-error review, even though trial court also erred in giving jury instruction that government had no duty to collect evidence corroborating testimony of police officers; defendant was permitted to question officers on their failure to obtain corroborative

evidence and to argue that lack of such evidence weakened government's case, nothing suggested that jury was misled by instructions, and case against defendant was strong. *Brown v. United States*, 881 A.2d 586, 2005 D.C. App. LEXIS 457 (2005).

On plain-error review, the Court of Appeals may reverse only if it finds an error that is obvious or readily apparent, clear under current law, and so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Brown v. United States*, 881 A.2d 586, 2005 D.C. App. LEXIS 457 (2005).

To reverse for plain error, the error must be clear or obvious, and so serious that it jeopardized the fairness of the trial or caused a miscarriage of justice. *Hammond v. United States*, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

Whether actions by police constitute "interrogation" is reviewed de novo. *In re G.E.*, 879 A.2d 672, 2005 D.C. App. LEXIS 387 (2005).

Trial judge's legal conclusions regarding whether the defendant was in custody and whether the facts, as found by the trial judge, require suppression of confession are reviewed de novo. *In re G.E.*, 879 A.2d 672, 2005 D.C. App. LEXIS 387 (2005).

An appellate court reviews a trial court's conclusions of law de novo. *In re A.F.*, 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

In reviewing the denial of a motion to suppress evidence, the Court of Appeals' review is de novo with respect to constitutional and other legal issues on which the denial of the suppression motion is based. *In re A.F.*, 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

Court of Appeals reviews de novo issues of statutory interpretation. *McNeely v. United States*, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

Whether two charged offenses merge into one is not for the jury to decide; rather, it is a question of law which an appellate court reviews de novo. *Blackledge v. United States*, 871 A.2d 1193, 2005 D.C. App. LEXIS 155 (2005).

Courts are especially reluctant to reverse for plain error when it is invited. *Blackledge v. United States*, 871 A.2d 1193, 2005 D.C. App. LEXIS 155 (2005).

Irrespective of whether motion to withdraw guilty plea based on argument that permitting plea to stand would result in "manifest injustice" is made prior or subsequent to sentencing, the standard of appellate review is abuse of discretion. *Blackledge v. United States*, 871 A.2d 1193, 2005 D.C. App. LEXIS 155 (2005).

Appellate court reviews issues of merger de novo to determine whether there has been a violation of the Double Jeopardy Clause. *Blackledge v. United States*, 871 A.2d 1193, 2005 D.C. App. LEXIS 155 (2005).

Trial court's decision to grant or deny immunity from prosecution for weapons offenses based upon an individual's voluntary surrender of weapons at issue to law enforcement is a question of law, subject to de novo review by the Court of Appeals, although that court grants deference to the trial court's factual determinations inherent in resolving the question. *Blackledge v. United States*, 871 A.2d 1193, 2005 D.C. App. LEXIS 155 (2005).

Trial court's refusal to allow defendant to present defense to marijuana charge under Religious Freedom Restoration Act was subject to plain error review, where defendant never mentioned statutory defense to trial judge, but instead presented defense under free exercise clause of First Amendment. *Nesbeth v. United States*, 870 A.2d 1193, 2005 D.C. App. LEXIS 136 (2005).

The appellate court reviews de novo the trial court's legal conclusions regarding a claim of ineffective assistance of counsel. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

In order to establish "plain error," defendant must show that any error was obvious or readily apparent, and that it was so clearly prejudicial to his substantial rights as to jeopardize the very fairness and integrity of the trial. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

Whether the evidence establishes that defendant was in custody for Miranda purposes is a question of law as to which appellate review is de novo. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

The correct interpretation and application of criminal discovery rule mandating pretrial disclosure of written summary of testimony of any expert witness that government intends to use during its case-in-chief at trial is a legal question which the Court of Appeals reviews de novo, since judicial discretion must be founded upon correct legal principles. *West v. United States*, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

The Court of Appeals applies a de novo standard of review to the legal determination regarding the voluntariness of a suspect's statement to police and reviews for clear error the factual findings supporting that determination; the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court's ruling. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

The determination of whether a person is in custody is a legal conclusion which the Court of

Appeals reviews de novo. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

The appellate court reviews the post-conviction trial court's legal conclusions de novo, with respect to claim of ineffective assistance of trial counsel, but accepts the post-conviction trial court's factual findings unless they lack evidentiary support in the record. *Lopez v. United States*, 863 A.2d 852, 2004 D.C. App. LEXIS 699 (2004).

On appeal, the Court of Appeals reviews a trial court's order de novo. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

Under the plain error standard, a defendant not only must establish error, but also that the error is plain and affects substantial rights; if he satisfies these three hurdles, he must then show either a miscarriage of justice, that is, actual innocence, or that the trial court's error seriously affected the fairness, integrity or public reputation of judicial proceedings. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Defendant failed to adequately object to court's belated addition to definition of self defense, and thus, appellate review of issue was required to be for plain error; although defendant's general objection was to additional language, and he conceded that he did not specify reasons for objection because he felt he was constrained not to explain further because jury was entering courtroom, trial court did not preclude defendant from stating brief basis for his objection or from approaching bench to explain it, and defendant made no request to do so. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Defendant failed to adequately object to court's definition of specific intent, and thus, appellate review of issue was required to be for plain error; although defendant initially raised concerns about definition of specific intent in relation to self-defense claim, issues raised were addressed in final instruction given, to which defendant did not object. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

When a party fails to raise a timely objection to an instruction, Court of Appeals will review that claim of error under the plain error standard. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of

certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Court of Appeals reviews a denial of a motion to suppress statements for Miranda violations with deference to the trial court's findings of evidentiary fact. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

Whether, on the duly established facts, a defendant was subjected to custodial interrogation without the benefit of Miranda warnings is a question of law, which the Court of Appeals reviews de novo. *Williams v. United States*, 858 A.2d 984, 2004 D.C. App. LEXIS 451 (2004), writ of certiorari denied by 545 U.S. 1122, 125 S. Ct. 2924, 162 L. Ed. 2d 308, 2005 U.S. LEXIS 4787, 73 U.S.L.W. 3719 (2005).

When a case is tried without a jury, the Court of Appeals, in reviewing the sufficiency of the evidence to support a conviction, may not disturb the trial court's findings unless it appears that the judgment is plainly wrong or without evidence to support it. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

On claim of insufficient evidence, appellate court views evidence in light most favorable to government, drawing all reasonable inferences in favor of government and deferring to jury's province to determine credibility and weigh evidence; it is only where government has produced no evidence from which reasonable mind might fairly infer guilt beyond reasonable doubt that appellate court can reverse conviction. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Trial court's admission of evidence of a crime for which defendant is not on trial based upon a proffer is reviewed for abuse of discretion. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Standard of review to determine whether trial court's error in admitting non-testifying co-defendant's videotaped confession, as well as plea allocutions of non-testifying co-defendants was for error of constitutional magnitude, in murder prosecution. *Morten v. United States*, 856 A.2d 595, 2004 D.C. App. LEXIS 422 (2004).

Under standard of review for error of a constitutional magnitude, reversal is required unless the government has shown beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *Morten v. United States*, 856 A.2d 595, 2004 D.C. App. LEXIS 422 (2004).

Court of Appeals reviews merger claims de novo to determine whether a violation of the Double Jeopardy Clause of the Fifth Amend-

ment occurred. *Jones v. United States*, 853 A.2d 146, 2004 D.C. App. LEXIS 370 (2004).

Whether a defendant's acts constitute the crime of contempt is a legal issue which the Court of Appeals reviews independently. *Vaas v. United States*, 852 A.2d 44, 2004 D.C. App. LEXIS 295 (2004).

Although the trial court's legal conclusion regarding whether the defendant was in custody is reviewed de novo, its underlying factual findings are reviewed under the clearly erroneous standard, and the record must be viewed in the light most favorable to the party that prevailed in the trial court, meaning that the Court of Appeals must sustain any reasonable inference that the trial court has drawn in defendant's favor from the evidence. *United States v. Little*, 851 A.2d 1280, 2004 D.C. App. LEXIS 337 (2004).

Whether reasonable suspicion or probable cause exists to justify a seizure is a mixed question of fact and law; the findings with respect to the historical facts are reviewed under the clearly erroneous standard, but the ultimate conclusion is subject to de novo review. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

Whether or not a particular hearsay exception applies to certain statements is a question of law which appellate court reviews de novo. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

A question of territorial jurisdiction, involving the application of law to the trial court's factual findings, is a legal issue which appellate court reviews de novo. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

Appellate review of defendant's Jencks claim, relating to his request for unavailable declarant's grand jury testimony which might impeach excited utterance admitted at trial under hearsay exception, would not be limited to review for plain error, though defendant's superior court claim did not expressly refer to the Court of Appeals' supervisory power over the superior courts; defendant properly presented a Jencks claim in the superior court, thereby preserving appellate review and permitting defendant to make any argument on appeal in support of that claim, and the trial court had been powerless to exercise supervisory authority. *Watkins v. United States*, 846 A.2d 293, 2004 D.C. App. LEXIS 156 (2004).

Court of Appeals would review under plain error standard issue of whether trial court's

error in failing to instruct on definition of "serious bodily injury" required reversal of conviction for aggravated assault while armed (AAWA), as defense counsel failed to object to instruction. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

Under plain error standard of review, defendant not only must establish error, but also must show that the error was plain and that it affected substantial rights; additionally, even if defendant satisfies these three hurdles, he must then show either a miscarriage of justice, that is, actual innocence, or that the trial court's error seriously affected the fairness, integrity or public reputation of judicial proceedings. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

If defendant did not object in a proper manner at trial to allegedly improper prosecutorial questions or comments, scope of Court of Appeals' review is limited to plain error. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Defendant's claim, that police officer's testimony that victim had reported that defendant "had beaten her" was not admissible as other act evidence, would be reviewed only for plain error, in appeal from conviction for first-degree child sexual abuse, where defendant objected at trial only on grounds that the testimony was inadmissible hearsay. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Appellate court would review, for plain error, admission of testimony under medical diagnosis exception to hearsay rule and trial court's failure to give limiting instruction regarding such testimony, where defense counsel failed to object to the testimony and failed to request a limiting instruction. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Trial court did not commit plain error by failing to give instructions on confessions, identification, and absence of flight, in prosecution for obstructing justice by attempting to intimidate a juror; government did not seek to admit defendant's statement as substantive evidence, but for impeachment, and defense theory was not misidentification. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Trial court did not commit plain error by failing to give special cautionary instruction related to the nature of charges, after prosecutor, in opening statement in prosecution for obstructing justice by attempting to intimidate a juror, improperly placed jurors in the position of the complaining witness; court sustained an objection to remarks and admonished prosecutor that they were improper, and gave an instruction that jury should not allow the nature

of the charges to affect its verdict. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Under plain-error review, the error must be: (1) obvious or readily apparent, and clear under current law, and (2) so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

The Court of Appeals accepts the trial judge's factual findings unless they lack evidentiary support, but reviews legal conclusions de novo. *Butler v. United States*, 836 A.2d 570, 2003 D.C. App. LEXIS 693 (2003).

The trial court's application of the law to the facts is reviewed de novo. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Plain error is found only in the exceptional case where, after reviewing the entire record, it can be said the claimed error is a fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done. *Bates v. United States*, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

Plain error requires a greater showing of harm than that required to obtain relief under the harmless error standard. *Bates v. United States*, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

When considering whether an attorney's motion to withdraw was properly denied, appellate court will review that denial only for abuse of discretion. *Oliver v. United States*, 832 A.2d 153, 2003 D.C. App. LEXIS 549 (2003).

Where the matter under review requires invocation or declaration of a fact-free general principle of law, the appellate court will designate the issue as a question of law, and review the matter de novo. In re Public Defender Serv., 831 A.2d 890, 2003 D.C. App. LEXIS 550 (2003).

The appellate court would apply the non-deferential de novo standard to the legal questions as to the scope and requirements of the crime-fraud exception, the burden and standard of proof, and the acceptability vel non of an ex parte proffer by the government to meet its burden to overcome the public defender service's attorney-client privilege. In re Public Defender Serv., 831 A.2d 890, 2003 D.C. App. LEXIS 550 (2003).

There is no one standard of review that is uniformly applied to mixed questions of law and fact, but they normally are reviewed de novo when the legal aspects are dominant. In re

Public Defender Serv., 831 A.2d 890, 2003 D.C. App. LEXIS 550 (2003).

In reviewing the trial court's resolution of a mixed question of fact and law, the appellate court will consider, among other things, whether the issue to be decided more closely resembles one of fact or of law, and whether the trial court or the appellate court is in a better position to render the decision with the higher degree of accuracy. In re Public Defender Serv., 831 A.2d 890, 2003 D.C. App. LEXIS 550 (2003).

The Court of Appeals reviews the trial court's findings of fact in connection with motion to suppress for clear error and its conclusions of law de novo. *James v. United States*, 829 A.2d 963, 2003 D.C. App. LEXIS 529 (2003).

Generally, Court of Appeals reviews a trial court's decision to dismiss a case for want of prosecution under a discretionary standard. *District of Columbia v. Cruz*, 828 A.2d 181, 2003 D.C. App. LEXIS 433 (2003).

Under the plain error standard of review, the appellant bears the burden of first establishing error, a deviation from the legal rule, and second, demonstrating that the error was so plain that the judge was derelict in countenancing it. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Trial court did not commit plain error in denying defendant's motion for severance of murder trial on ground that introduction of evidence that co-defendant had previously been seen with gun was prejudicial to defendant; gun was admitted into evidence for limited, permissible purpose, to show that defendants had means to commit crime, and, even if evidence were only probative of the charges against co-defendant, there was no evidence that defendant's substantial rights were affected, since trial court gave limiting instructions to jury that they should think of proceedings as two separate trials and that they were to consider evidence against defendants separately. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

When reviewing the denial of a motion for judgment of acquittal, the Court of Appeals employs the same standard as that applied by the trial court in determining whether the evidence was sufficient to convict. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Under the plain error standard of review applicable to unpreserved claims, appellate court will reverse only if the error is obvious and so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Decision to grant or deny a motion for a new trial is within the trial court's discretion, and appellate court reviews the trial court's deci-

sion for an abuse of discretion. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

The Court of Appeals reviews de novo the trial court's legal conclusions, and makes its own independent determination of whether there was either probable cause to arrest or reasonable suspicion justifying a Terry stop. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

Appellate court reviews denial of a motion for judgment of acquittal de novo and, like the trial court, determines whether the evidence, viewed in the light most favorable to the government, was such that a reasonable juror could find guilt beyond a reasonable doubt. In re *Ryan*, 823 A.2d 509, 2003 D.C. App. LEXIS 285 (2003).

Under the plain error standard, the error must be: (1) obvious or readily apparent, and clear under current law; and (2) so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Under the plain error standard, the Court of Appeals will reverse only if the error is obvious and so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

A trial court's decisions about admission or exclusion of evidence are reviewed for abuse of discretion. *Jones v. United States*, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Appellate court reviews for abuse of discretion the trial court's decision to deny without a hearing a motion attacking sentence based on alleged ineffective assistance of counsel. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Claim of constructive amendment of indictment which was not raised at the trial level must be reviewed under three-part plain error test: first, there must be error, i.e., deviation from a legal rule; second, the error must be plain, i.e., obvious or clear under current law; and third, the error must affect substantial rights. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Plain error standard applied to review of defendant's claims of prosecutorial impropriety, where defendant made no objection at trial. *Armfield v. United States*, 811 A.2d 792, 2002 D.C. App. LEXIS 675 (2002).

The Court of Appeals reviews a trial court's decision not to hold a hearing on ineffective-assistance claim for an abuse of discretion. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

When reviewing a sufficiency-of-the-evidence claim, the Court of Appeals applies the same standard as the trial court. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

Appellate court must view the record in the light most favorable to the party that prevailed in the trial court and must sustain any reasonable inference that the trial judge has drawn from the evidence. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

The trial court's underlying factual findings are reviewed under the clearly erroneous standard and will be set aside only if they lack substantial support in the record. *Harkins v. United States*, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

A defendant alleging plain error must show that the error resulted in a miscarriage of justice because the defendant is actually innocent, or that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Under the plain error standard of review, not only must error be established, but also the error must be plain and clearly prejudicial to substantial rights. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Trial court erred in failing to provide jury with definition of "serious bodily injury," but error was not plain error warranting reversal of conviction for aggravated assault, even assuming that the law regarding the necessity of proving the "seriousness" of the victim's injury was "settled" at the time of trial and was clearly contrary to the law at the time of appeal, where there was no miscarriage of justice nor any undermining of the fairness and integrity of the judicial proceedings; trial court had completely enumerated all elements of the crime, and evidence of the seriousness of the bodily injury to the victim was ample. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Defendant failed to preserve his objection to trial judge's grant to two additional peremptory strikes in jury selection, and thus, standard of review was plain error standard, where defense counsel not only failed to object to two strikes at trial, but actually requested two strikes after judge initially granted one. *Johnson v. United States*, 804 A.2d 297, 2002 D.C. App. LEXIS 434 (2002).

When an objection is made in the trial court, appellate court reviews a questions of law de novo. *York v. United States*, 803 A.2d 1009, 2002 D.C. App. LEXIS 392 (2002).

The appropriate standard of review for determining whether trial court should have submitted assault charges to jury was plain error

because defendant failed to object at trial. *York v. United States*, 803 A.2d 1009, 2002 D.C. App. LEXIS 392 (2002).

Whether probable cause to seize physical evidence exists is a mixed question of law and fact in which legal questions predominate and, consequently, an appellate court reviews the trial court's legal determinations de novo while giving deferential review to the underlying facts. *York v. United States*, 803 A.2d 1009, 2002 D.C. App. LEXIS 392 (2002).

The appellate court independently reviews the trial court's legal conclusion on probable cause for a search. *York v. United States*, 803 A.2d 1009, 2002 D.C. App. LEXIS 392 (2002).

In reviewing a trial court's ruling on a motion to vacate, set aside, or correct the sentence, the Court of Appeals yields to the trial court's factual findings when supported by the record, but reviews its legal conclusions de novo. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Plain error review applies to a claim that an indictment has been constructively amended if an objection has not been made at the trial level. *Smith v. United States*, 801 A.2d 958, 2002 D.C. App. LEXIS 366 (2002), writ of certiorari denied by 537 U.S. 1011, 123 S. Ct. 479, 154 L. Ed. 2d 413, 2002 U.S. LEXIS 8233, 71 U.S.L.W. 3318 (2002).

Plain error standard of review requires a showing of obvious or readily apparent error that is so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Smith v. United States*, 801 A.2d 958, 2002 D.C. App. LEXIS 366 (2002), writ of certiorari denied by 537 U.S. 1011, 123 S. Ct. 479, 154 L. Ed. 2d 413, 2002 U.S. LEXIS 8233, 71 U.S.L.W. 3318 (2002).

Court of Appeals will reverse under plain error standard of review only in exceptional circumstances where a miscarriage of justice would otherwise result. *Smith v. United States*, 801 A.2d 958, 2002 D.C. App. LEXIS 366 (2002), writ of certiorari denied by 537 U.S. 1011, 123 S. Ct. 479, 154 L. Ed. 2d 413, 2002 U.S. LEXIS 8233, 71 U.S.L.W. 3318 (2002).

Plain error rule was not applicable to defendant's contention that driving under the influence (DUI) and operating a motor vehicle while impaired (OWI) statutes proscribed identical conduct, and thus inconsistent verdict was rendered when he was acquitted of DUI and convicted of OWI; issue arose only after verdict was entered and before that time defendant could not have challenged the government's decision to prosecute him under both statutes. *Smith v. United States*, 801 A.2d 958, 2002 D.C. App. LEXIS 366 (2002), writ of certiorari denied by 537 U.S. 1011, 123 S. Ct. 479, 154 L. Ed.

2d 413, 2002 U.S. LEXIS 8233, 71 U.S.L.W. 3318 (2002).

The role of an appellate court, for purposes of a claim of prosecutorial misconduct, is to determine whether the trial judge should have intervened if and when the prosecutor went beyond the limits of permissible argument. *Smith v. United States*, 801 A.2d 958, 2002 D.C. App. LEXIS 366 (2002), writ of certiorari denied by 537 U.S. 1011, 123 S. Ct. 479, 154 L. Ed. 2d 413, 2002 U.S. LEXIS 8233, 71 U.S.L.W. 3318 (2002).

The Court of Appeals reviews a decision not to conduct an evidentiary hearing on a motion attacking sentences based on allegations of ineffective assistance of counsel under an abuse of discretion standard. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

The Court of Appeals reviews a trial court's decision to deny a motion for a new trial based on newly discovered evidence under an abuse of discretion standard. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

Denial of requests for appointment of counsel to pursue collateral relief is reviewed for an abuse of discretion. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Whether the simple assault statute applied to parent-child assaults at all, and whether the government was required in prosecution involving such an assault to prove malice to overcome parental discipline defense, were questions of law over which appellate court's review was de novo. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Under the plain-error standard of review, an error must be: (1) obvious or readily apparent, and clear under current law, and (2) so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

An appellate court will reverse for plain error only in exceptional circumstances where a miscarriage of justice would otherwise result. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Unless the denial of a request for continuance is so arbitrary as to deny due process, it is reviewable only for abuse of discretion. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Court of Appeals reviews the trial court's ruling in admission of evidence under abuse of discretion and will reverse only if the exercise of discretion is clearly erroneous. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Whether acts in which defendant was found to have engaged constitute criminal contempt is a question of law that appellate court reviews de novo. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

Appellate court would consider de novo the question whether summary criminal contempt proceeding was warranted at hearing on an application for civil protection order, in view of the unusual nature of summary proceedings, and in light of the curtailment in summary proceedings of a defendant's procedural rights. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

On appeal from the trial court's denial of a suppression motion on Miranda grounds, Court of Appeals' role is to ensure that the trial court had a substantial basis for concluding that no constitutional violation occurred. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

On appeal from the trial court's denial of a suppression motion on Miranda grounds, Court of Appeals reviews the trial court's underlying factual findings deferentially, and it will not set them aside unless they are clearly erroneous, that is, unless they lack substantial support in the record. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

When a defendant challenges statement on Miranda grounds, Court of Appeals reviews de novo the trial court's legal conclusions as to whether the defendant was in custody and whether the facts established a Miranda violation. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

In determining whether Miranda violation occurred, Court of Appeals views the record in the light most favorable to the party that prevailed in the trial court, and will sustain any reasonable inference that the trial judge has drawn from the evidence. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

In evaluating a claim of abuse of discretion by the trial court, the appellate court must determine, first, whether the exercise of discretion was in error, and if so, whether the impact of the error requires reversal. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

In determining whether defendant's conviction should be reversed, it is the appellate court's function to review the record for legal error or abuse of discretion by the trial judge, not by counsel. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

The standard for reversal where more than one error is asserted on appeal is whether the cumulative impact of the errors substantially influenced the jury's verdict. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

In assessing whether combination of errors may have substantially influenced jury's verdict, requiring reversal of the convictions, appellate court evaluates the significance of the alleged errors and their combined effect against the strength of the prosecution's case. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

Whether a seizure has occurred for Fourth Amendment purposes is a question of law which the Court of Appeals reviews *de novo*, while deferring to the trial court's factual findings, unless clearly erroneous. *Casey v. United States*, 788 A.2d 155, 2002 D.C. App. LEXIS 1 (2002).

Court of Appeals reviews for an abuse of discretion a trial court's limiting the extent and scope of cross-examination. *Keels v. United States*, 785 A.2d 672, 2001 D.C. App. LEXIS 243 (2001).

Where the law at the time of the trial was settled and clearly contrary to the law at the time of appeal, it is enough that an error be "plain" at the time of appellate consideration. *Keels v. United States*, 785 A.2d 672, 2001 D.C. App. LEXIS 243 (2001).

Under the plain error standard, a defendant not only must establish error, but also that the error is plain and affects substantial rights; if he satisfies these three hurdles, he must then show either a miscarriage of justice, that is, actual innocence, or that the trial court's error seriously affected the fairness, integrity or public reputation of judicial proceedings. *Keels v. United States*, 785 A.2d 672, 2001 D.C. App. LEXIS 243 (2001).

The decision to order a mistrial is subject to the broad discretion of the trial court and the standard of review of the Court of Appeals is deferential. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Reversal is required when an error compromised the fairness of the trial, or if the error had a possible substantial impact upon the outcome; in making this determination, the Court of Appeals must consider the closeness of the case, the centrality of the issue affected, and the steps taken to mitigate the effects of the error. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Proof beyond a reasonable doubt is not merely a guideline for the trier of fact; it also furnishes a standard for judicial review of the sufficiency of the evidence. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Reconstructed photo array permitted Court of Appeals to conduct fair *de novo* review regarding both suggestibility and reliability of original array, in assault prosecution; police detective who created original array testified that reconstructed array was an accurate representation of original array shown to victim,

five of nine photos in array were originals, copies of remaining four photos in array were made from original negatives, and process employed to replicate original array was trustworthy. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Correct standard of review for defendant's claim that his right to confrontation was violated, due to trial court's *ex parte* ruling that prosecution did not need to divulge to defense factual basis for government witness' possible bias, which was that witness' sons were under investigation for sexually abusing two of defendant's children, was constitutional harmless error standard, not Brady standard, in prosecution for cruelty to children and assault; trial court kept evidence from being used by defense, thereby precluding a relevant inquiry as to bias, and trial counsel never had opportunity to argue why allegations against witness' sons would be relevant. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

While the appellate court will defer to the trial court's findings of fact regarding the motion to suppress, the appellate court reviews the trial court's conclusions of law *de novo*. *McCoy v. United States*, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

In reviewing a determination that counsel's performance was not deficient, the Court of Appeals yields to the trial court's factual findings when supported by the record, but reviews its legal conclusions *de novo*. *Leftridge v. United States*, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

When a jury reports that it is deadlocked, the trial judge must decide whether to instruct the jurors to make further efforts to reach a verdict (and if so, how to instruct them), or to declare a mistrial; these decisions are reviewed for abuse of discretion. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

The Court of Appeals reviews a defendant's assertions regarding the separate decisions to join charges and to deny severance under different standards of review; the assertion of wrongful joinder presents a question of law and is thus subjected to *de novo* review, whereas severance for prejudice is committed to the sound discretion of the trial court and will not be reversed absent a compromise of the fairness of the trial. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

The appellate court is bound by the trial court's findings regarding an identification procedure, if they are supported by the evidence and in accordance with law. *Smith v. United States*, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Trial court's exclusion of evidence of witness's juvenile adjudication for second degree murder was not constitutional error subject to harmless error, rather than abuse of discretion, standard

of review, absent showing of bias; although witness may have been under court supervision when first interviewed by police in murder investigation, witness had no current relationship to the court system when he took stand in defendant's trial, such as to provide a basis for him to curry favor with the government by lying. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

When Court of Appeals is faced with a claim that cross-examination was unduly restricted, the standard of review will depend upon the scope of cross-examination permitted by the trial court measured against its assessment of the appropriate degree of cross-examination necessitated by the subject matter thereof, as well as the other circumstances that prevailed at trial. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

Under the plain error standard, the error must be: (1) obvious or readily apparent, and clear under current law, and (2) so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Appellate court will reverse under the plain error standard only in exceptional circumstances where a miscarriage of justice would otherwise result. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Assertions raised for the first time on appeal are reviewed for plain error. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Under the plain error standard, the error must be: (1) obvious or readily apparent, and clear under current law, and (2) so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Court of Appeals will reverse under the plain error standard only in exceptional circumstances where a miscarriage of justice would otherwise result. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Court of Appeals decides de novo whether there was probable cause to justify a search. *McFerguson v. United States*, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub

nomine *Worthington v. United States*, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

Although Court of Appeals defers to relevant factual findings made by the trial court on motion to suppress, Court of Appeals reviews de novo the ultimate question of whether a seizure was supported by reasonable suspicion. *McFerguson v. United States*, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub nomine *Worthington v. United States*, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

Court of Appeals applies a de novo standard of review to issues of statutory interpretation. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

A trial court's determination of relevancy is reviewable only for abuse of discretion. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

Court of Appeals reviews the denial of a defendant's request for a jury trial de novo. *Smith v. United States*, 768 A.2d 577, 2001 D.C. App. LEXIS 52 (2001).

On appeal of a trial court's ruling that Brady material would not have materially affected the verdict, the Court of Appeals's review is limited to a determination of whether that decision was reasonable. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

For purposes of a challenge to the sufficiency of the evidence in a criminal case, deference must be given to the factfinder's duty to determine credibility, weigh the evidence, and draw justifiable inferences of fact. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

In a bench trial, the trial court's factual findings will not be overturned unless they are "plainly wrong" or without evidence to support them. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

In reviewing a trial court order denying a motion to suppress, the trial court's conclusions of law are independently reviewed under a de novo standard. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

The Court of Appeals may affirm for reasons other than those relied on by the trial court, at least when no additional factual issues remain to be resolved. *Thomas v. United States*, 766 A.2d 50, 2001 D.C. App. LEXIS 21 (2001).

The standard of review of a ruling admitting hearsay as a declaration against penal interest required a determination whether the trial court's factual findings were clearly erroneous. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

The trial court's conclusion that a hearsay statement is against the declarant's penal interest is a legal question reviewed de novo. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

In examining the denial of a motion for judgment of acquittal, the Court of Appeals reviews the evidence in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

The trial court's decision on whether to order disclosure of a confidential informant's identity is reviewed only for abuse of discretion. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

When reviewing the denial of a motion for judgment of acquittal, the Court of Appeals employs the same standard as that applied by the trial court in determining whether the evidence was sufficient to convict. *Timberlake v. United States*, 758 A.2d 978, 2000 D.C. App. LEXIS 208 (2000).

Abuse of discretion standard of review applied to rape defendant's claim that trial court erred by allowing cross-examination of him beyond scope of his direct testimony at pretrial hearing on alleged prior consensual sex with complainant. *Timberlake v. United States*, 758 A.2d 978, 2000 D.C. App. LEXIS 208 (2000).

Plain error standard of review applied to defendant's claim that trial court violated his Fifth Amendment privilege against self-incrimination by allowing in depth cross examination of him at trial, based on his testimony at pre-trial hearing on alleged prior consensual sex with complainant, where defendant did not raise a Fifth Amendment challenge to use of pre-trial hearing transcript at trial. *Timberlake v. United States*, 758 A.2d 978, 2000 D.C. App. LEXIS 208 (2000).

Court of Appeals reviews a trial court's denial of a motion for judgment of acquittal de novo, and like the trial court, determines whether the evidence, viewed in the light most favorable to the government, was such that a reasonable juror could find guilt beyond a reasonable

doubt. *Johnson v. United States*, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

In recognizing the jury's role in weighing the evidence, the Court of Appeals, when reviewing a denial of a motion for judgment of acquittal, will defer to the jury's credibility determinations, as well as to its ability to draw justifiable inferences of fact. *Johnson v. United States*, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

For purposes of appellate review, trial court's determination whether counsel was ineffective presents mixed question of law and fact, and standard of review is deferential one; reviewing court will accept judge's factual findings unless they lack evidentiary support, but will review legal conclusions de novo, and that standard of review applies to all ineffective assistance of counsel claims, including those based on attorney's conflict of interest. *Derrington v. United States*, 681 A.2d 1125, 1996 D.C. App. LEXIS 149 (1996).

Where no objection to matter contested on appeal was made at trial, appellate court reviews for plain error. *Zanders v. United States*, 678 A.2d 556, 1996 D.C. App. LEXIS 122 (1996).

Under the "plain error" standard of review, an error not objected to at trial is unreachable on review unless it is so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of trial. *McKenzie v. United States*, 659 A.2d 838, 1995 D.C. App. LEXIS 117 (1995), writ of certiorari denied by 517 U.S. 1127, 116 S. Ct. 1369, 134 L. Ed. 2d 534, 1996 U.S. LEXIS 2297, 64 U.S.L.W. 3657 (1996).

Trial judge's factual findings when making determination whether defense counsel was ineffective will be accepted unless they lack evidentiary support, but the judge's legal conclusions will be reviewed de novo. U.S.C. Const.Amend. 6. *Byrd v. United States*, 614 A.2d 25, 1992 D.C. App. LEXIS 210 (1992).

To warrant reversal under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. *Townsend v. United States*, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by 481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

When a claim is brought for the first time on appeal, the applicable standard of review is plain error. *Townsend v. United States*, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by 481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

Examination of decided cases revealed that, contrary to defendant's contention, review under plain-error standard where a defendant objects for first time on appeal is uniformly

enforced and that plain-error rule is not invoked arbitrarily. D.C. Code 1981, § 11-721(e). *Allen v. United States*, 495 A.2d 1145, 1985 D.C. App. LEXIS 433 (1985).

— Timing, review.

Trial court lacked jurisdiction to hear defendant's motion to vacate sentence for carrying a pistol without a license (CPWL) in a gun-free zone, possession of an unregistered firearm, and possession of ammunition, where defendant had already served his sentence, and therefore was not detained or in custody at time he filed motion. *Jeffrey v. United States*, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

Defendant's motion for a new trial based on alleged newly discovered evidence was jurisdictionally barred, where defendant did not file motion until more than 13 years after he was found guilty. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

The time periods for filing a new trial motion are jurisdictional; the Court of Appeals has no power to consider an untimely new trial motion, even if the result seems harsh. *Washington v. United States*, 834 A.2d 899, 2003 D.C. App. LEXIS 632 (2003).

Judgment of conviction does not become final for purposes of new trial rule until appellate process had been completed and appellate court's mandate had issued. *Arrington v. United States*, 804 A.2d 1068, 2002 D.C. App. LEXIS 483 (2002).

Time window of 120 days for the correction of a sentence that was imposed in an illegal manner is jurisdictional, and it may not be circumvented by means of a motion to vacate sentence. *Brown v. United States*, 795 A.2d 56, 2002 D.C. App. LEXIS 74 (2002).

Consolidation of direct appeal with appeal of denial of postconviction relief is not required, and if appellate counsel believes that he has a meritorious issue in the direct appeal, he may request that the appeals not be consolidated and resolution of the direct appeal not be deferred, thus avoiding whatever additional delay the postconviction relief proceedings might add to the combined appeals. *Williams v. United States*, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

The time periods for filing a new trial motion based on newly discovered evidence are jurisdictional; the Court of Appeals has no power to consider an untimely new trial motion, even if the result seems harsh and it is difficult to see how the alleged newly discovered evidence would have been available within the jurisdictional period. *Taylor v. United States*, 759 A.2d 604, 2000 D.C. App. LEXIS 221 (2000).

Absent a provision in rule or statute for tolling of time to note an appeal upon filing a motion to reduce sentence, motion to reduce sentence did not toll time for noting defendant's

appeal from revocation of his probation and imposition of sentence, and thus defendant's appeal from revocation of probation and sentencing to prison was untimely. Criminal Rule 35; Court of Appeals Rule 4(b). *Jackson v. United States*, 626 A.2d 878, 1993 D.C. App. LEXIS 137 (1993).

The noting of a timely appeal is jurisdictional. *Jackson v. United States*, 626 A.2d 878, 1993 D.C. App. LEXIS 137 (1993).

Motion for reconsideration of denial of posttrial motion to vacate sentence did not toll time for noting appeal from motion to vacate. Court of Appeals Rule 4(b)(2); D.C. Code 1981, § 23-110. *Taylor v. United States*, 603 A.2d 451, 1992 D.C. App. LEXIS 49 (1992), writ of certiorari denied by 506 U.S. 852, 113 S. Ct. 155, 121 L. Ed. 2d 105, 1992 U.S. LEXIS 5134, 61 U.S.L.W. 3259 (1992).

Defendant's failure to file separate notice of appeal from denial of posttrial motion deprived reviewing court of jurisdiction to consider any claims of error relating to motion. D.C. Code 1981, § 23-110. *Taylor v. United States*, 603 A.2d 451, 1992 D.C. App. LEXIS 49 (1992), writ of certiorari denied by 506 U.S. 852, 113 S. Ct. 155, 121 L. Ed. 2d 105, 1992 U.S. LEXIS 5134, 61 U.S.L.W. 3259 (1992).

To show excusable neglect for failure to timely file notice of appeal, appellant must show that he has done all he could do under circumstances to perfect appeal within time prescribed by rules. Court of Appeals Rule 4(b)(1, 3). *Thomas v. United States*, 586 A.2d 1228, 1991 D.C. App. LEXIS 39 (1991).

"Excusable neglect" for failure to timely file appeal from convictions was not shown where only allegation was that trial counsel miscalculated when time to appeal expired and that defendant relied on trial counsel to timely file. Court of Appeals Rule 4(b)(1, 3). *Thomas v. United States*, 586 A.2d 1228, 1991 D.C. App. LEXIS 39 (1991).

Trial court properly granted Government's motion to extend time for filing a notice of appeal of order granting petition for writ of error coram nobis and vacating petitioner's sentence for second-degree burglary. Court of Appeals Rule 4, pt. II(b)(3). *United States v. Higdon*, 496 A.2d 618, 1985 D.C. App. LEXIS 456 (1985).

To preserve right to direct appeal from conviction when defendant is resentenced, defendant must file notice of appeal within ten days of resentencing. D.C. Code 1973, § 23-110; Court of Appeals Rule 4, Pt. II(b)(1). *Little v. United States*, 438 A.2d 1264, 1981 D.C. App. LEXIS 399 (1981).

Court of Appeals had jurisdiction to consider appeal from order denying pro se petition for reconsideration of earlier order rejecting defendant's motion for vacation of sentence and resentencing, notwithstanding that ten-day pe-

riod in which appeals had to be taken commenced to run on date defendant received order and that notice of appeal was received by court 14 days after defendant received notice, where defendant was incarcerated and without assistance of counsel at time order was received, where date at top of defendant's letter accompanying his notice of appeal was within ten-day limitation, and in view of admonition that rules be construed to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay. D.C. Code 1973, § 23-110; Court of Appeals Rule 4, Pt. II(b); Criminal Rule 2. *Little v. United States*, 438 A.2d 1264, 1981 D.C. App. LEXIS 399 (1981).

Where order denying motion to vacate sentence was entered on September 9, 1980, but record showed no indication that court clerk mailed order nor did it contain proof as to when movant received order or otherwise learned of its contents, other than date appearing on notice of appeal itself next to signature, October 6, 1980, movant's notice of appeal, which was received and stamped filed October 15, 1980, from denial of his motion to vacate sentence had to be accepted as timely. D.C. Code 1973, § 23-110; Court of Appeals Rule 4, Pt. II(b)(4). *Samuels v. United States*, 435 A.2d 392, 1981 D.C. App. LEXIS 359 (1981).

Where trial court's clerk failed to enter in trial court records date of mailing of notice of trial court's order summarily denying defendant's pro se motion to vacate his sentence, and there was no other proof of mailing of notice except for defendant's receipt thereof, time for appeal could only be said to run from time of defendant's actual notice of order, and thus defendant's motion for leave to appeal in forma pauperis was within required ten-day period for notice of appeal, so as to be timely. D.C. Code Court of Appeals Rules, rule 4, pt. II(b)(1, 4); D.C. Code § 23-110. *Williams v. United States*, 412 A.2d 17, 1980 D.C. App. LEXIS 245 (1980).

Motion for new trial in interest of justice filed more than five days after verdict was untimely. D.C. Code SCR, Criminal Rule 33; D.C. Code § 23-110. *Williams v. United States*, 295 A.2d 503, 1972 D.C. App. LEXIS 266 (1972).

Sentencing and punishment.

Appellate counsel's failure to "reargue" the sufficiency of the evidence supporting defendant's upheld convictions and to challenge the imposition of consecutive sentences for armed robbery and armed burglary was not objectively unreasonable, as required to support defendant's ineffective assistance claim, after the District of Columbia Court of Appeals remanded defendant's case for the limited purpose of correcting the improperly imposed en-

hancements to his sentence; such arguments would have been outside the scope of the remand, and under the mandate rule, the inferior court had no power or authority to deviate from the mandate issued by the appellate court. *Sanders v. Caraway*, 2012 WL 1632862 (2012).

Defendant's motion to vacate sentence on the ground of Brady violations was procedurally barred as an abuse of writ; defendant knew or should have known of his Brady claims at the time his direct appeal was filed and certainly by his previous motion to vacate sentence, defendant did not show cause for his failure to raise the claims earlier, and the alleged Brady violations did not work to defendant's actual disadvantage or infect his murder trial with error of constitutional dimensions. *Wright v. United States*, 979 A.2d 26, 2009 D.C. App. LEXIS 359 (2009).

Once a prisoner's sentence has completely expired, the collateral consequences of a conviction are not sufficient to render the former prisoner in custody for purposes of either a motion attacking sentence or habeas corpus. *Norris v. United States*, 927 A.2d 1034, 2007 D.C. App. LEXIS 324 (2007).

Neither motion to attack sentence nor writ of habeas corpus were appropriate remedies for prisoner's claim that prior robbery conviction as youthful offender should be set aside because D.C. Board of Parole had granted him early discharge but failed to issue certificate; prisoner was not seeking to challenge custody under prior sentence, and setting aside prior conviction would not necessarily reduce sentence petitioner was currently serving in federal prison on subsequent drug charges. *Norris v. United States*, 927 A.2d 1034, 2007 D.C. App. LEXIS 324 (2007).

The power to affix the penalty upon conviction is vested exclusively in the trial court, and the appellate court is vested with no jurisdiction in respect of that power, provided the penalty does not exceed the statutory limit. *Plummer v. United States*, 870 A.2d 539, 2005 D.C. App. LEXIS 138 (2005).

Trial judge has broad discretion in imposing conditions of probation as long as they are reasonably related to the rehabilitation of the defendant and the protection of the public. *Belay v. District of Columbia*, 860 A.2d 365, 2004 D.C. App. LEXIS 570 (2004).

Generally, a sentence within statutory limits is not subject to review. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Appellate review of sentencing is extremely limited. *Smith v. United States*, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of

certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

Severance.

Ordinarily, if appellate courts determine that the trial court did not fully consider all relevant factors for severing defendants' trials, a remand for further consideration of the severance motion by the trial judge under the proper standard is in order. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Ordinarily, if appellate court determined that trial court did not fully consider all relevant factors for severance of defendants, appellate court would remand for further consideration of severance motion, but remand was not warranted where, on the record, trial court had but one option, namely to grant severance motion; co-defendant's proffered testimony that he did not see defendant with gun had powerful exculpatory potential because it suggested that defendant was never in possession of gun found in car, and if credited, it directly contradicted a fact necessary to prove weapons offense, and both counsel apprised court of problem posed by co-defendant's Fifth Amendment privilege and proposed solution significantly supported conclusion that co-defendant's testimony was reasonably likely to be forthcoming. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

The trial court enjoys wide latitude in determining whether severance of defendants is required, and appellate court does not lightly conclude that the trial court has abused its discretion. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Speedy trial.

— In general.

Defendant's argument that his plea agreement with the United States Attorney barred criminal contempt action against him would be reviewed under the plain error standard, where defendant did not present that claim in the trial court during his criminal contempt proceeding, but raised it over three years after his contempt conviction in a motion to vacate that conviction. *In re Robertson*, 19 A.3d 751, 2011 D.C. App. LEXIS 305 (2011).

In considering the "assertion of the right" factor in the speedy trial analysis, the Court of Appeals takes into account whether the assertion is merely pro forma, or whether the defendant really seeks a prompt trial. *Hammond v. United States*, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S.

931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

For purposes of speedy trial analysis, the Court of Appeals considers de novo the trial court's legal conclusions and will reverse its decision for errors of law. *Hammond v. United States*, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

To analyze a claim that the right to a speedy trial has been denied, the Court of Appeals uses the familiar four-pronged balancing test and considers: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion of the right by the defense; and (4) any resulting prejudice to the accused. *Hammond v. United States*, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

The factors for analyzing a speedy trial claim are related and must be considered together with other relevant circumstances in a difficult and sensitive balancing process. *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct. 2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

The Court of Appeals applies a four-factor test when analyzing Sixth Amendment speedy trial claims; the four factors include: (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) prejudice to the defendant. *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct. 2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

A defendant asserting that his right to a speedy trial was violated and that the delay impaired the presentation of his defense cannot predicate prejudice upon his own failure to commence his defense efforts. *U.S.C. Const. Amend. 6. Townsend v. United States*, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by 481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

Government's explanation that it was trying to build a case against codefendant so that all three defendants involved in felony-murder could be tried jointly did not excuse delay in bringing defendant to trial or render it neutral. *U.S. Const. Amend. 6. Townsend v. United*

States, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by 481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

Defendant's right to a speedy trial was not infringed by delay of more than one year between his arrest and his trial, in that the delay alone did not prejudice his defense, the Government did not deliberately delay the proceedings so as to gain a tactical advantage, and defendant never asserted his right until appeal. U.S. Const. Amend. 6. *Townsend v. United States*, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by 481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

The fact that the accused is subject to uncertainty about his future does not mandate reversal on speedy trial grounds, rather, it requires that the court balance the impact of that uncertainty against other factors to determine whether his constitutional right to a speedy trial has been infringed. U.S.C. Const. Amend. 6. *Townsend v. United States*, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by 481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

In reviewing a speedy trial claim, court must evaluate four factors: length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *Miller v. United States*, 479 A.2d 862, 1984 D.C. App. LEXIS 430 (1984).

Delay caused by court congestion and ordinary institutional factors is the kind of "neutral" delay that Court of Appeals, in determining whether right to speedy trial has been violated, weighs less heavily against the government than either deliberate delay to secure a tactical advantage or "significant" delay caused by prosecution failure to take reasonable means to bring case to trial. *Miller v. United States*, 479 A.2d 862, 1984 D.C. App. LEXIS 430 (1984).

Fact of incarceration and defendant's motions for release prior to his formal speedy trial motion lent additional weight to his speedy trial motion, but did not amount to a strong indication that defendant wished a speedy trial prior to his formal motion. *Miller v. United States*, 479 A.2d 862, 1984 D.C. App. LEXIS 430 (1984).

Factor of prejudice to the accused in speedy trial violation analysis is assessed in light of interests of defendants that speedy trial right was designed to protect, including: preventing oppressive pretrial incarceration; minimizing anxiety and concern of accused; and limiting possibility that defense may be impaired. *Miller v. United States*, 479 A.2d 862, 1984 D.C. App. LEXIS 430 (1984).

Since reasons why juries have difficulty in deciding some cases can vary from the rational to the inexplicable and often cannot be ascertained, it is too dangerous one way or another to consider whether case is "close" on question of prejudicial delay. (Per Nebeker, J., with one Judge concurring.) U.S. Const. Amends. 5, 6. *United States v. Donaldson*, 451 A.2d 51, 1982 D.C. App. LEXIS 439 (1982), writ of certiorari denied by 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124, 1983 U.S. LEXIS 1351, 52 U.S.L.W. 3264 (1983).

In order for accused to maintain due process claim based on delay of trial, he must demonstrate that pretrial delay caused substantial prejudice to his right to fair trial and that delay was intentional device to gain tactical advantage over him. (Per Nebeker, J., with one Judge concurring.) U.S. Const. Amends. 5, 6. *United States v. Donaldson*, 451 A.2d 51, 1982 D.C. App. LEXIS 439 (1982), writ of certiorari denied by 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124, 1983 U.S. LEXIS 1351, 52 U.S.L.W. 3264 (1983).

There was no due process violation based on delay of trial where government-caused delay was not result of intent to gain tactical advantage over defendant. U.S. Const. Amend. 5. *United States v. Donaldson*, 451 A.2d 51, 1982 D.C. App. LEXIS 439 (1982), writ of certiorari denied by 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124, 1983 U.S. LEXIS 1351, 52 U.S.L.W. 3264 (1983).

Defendant's Sixth Amendment speedy trial rights were not violated on theory that substantial prejudice from prearrest delay caused period of postarrest delay to be more prejudicial to defendant where Government had not delayed intentionally, defendant had failed to assert his speedy trial right until nine days before trial, and defendant had not stated sufficient prejudice in his claims that delay impaired trial preparation and enhanced likelihood of court's finding two minors competent to testify. U.S. Const. Amend. 6. *Smith v. United States*, 414 A.2d 1189, 1980 D.C. App. LEXIS 290 (1980).

— Length of delay, speedy trial.

Defendant's Fifth Amendment due process rights were not prejudiced by the four and one-half month delay between defendant's arrest and his trial, even though defendant claimed that he could not remember what happened on the day that his son was beaten; defendant's lack of memory was insufficient to establish prejudice. *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct. 2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

Defendant's Sixth Amendment speedy trial rights were not violated; only four and one-half months elapsed between defendant's arrest and

his trial, the delay between defendant's arrest and trial was attributable to the normal processing of the case, defendant failed to raise his speedy trial concerns in the trial court, and the trial court found that defendant was not prejudiced by the delay. *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct. 2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

Delay of 27 months between defendant's arrest and trial was prima facie violation of defendant's Sixth Amendment right to speedy trial. U.S. Const. Amend. 6. *Sanders v. United States*, 550 A.2d 343, 1988 D.C. App. LEXIS 205 (1988).

Government had carried burden to justify 27-month delay between defendant's arrest and trial, and defendant's Sixth Amendment speedy trial right was not violated; most of delay was attributable to normal "congestion," three months were due to defendant's seeking new counsel, another nine months were attributable to defendant's interlocutory appeal of court order to give blood sample, defendant did not demand trial until more than 21 months after his arrest, most of his claims of prejudice were bare assertions, and incarceration, while prejudicial, was in part attributable to detainer from another state. U.S. Const. Amend. 6. *Sanders v. United States*, 550 A.2d 343, 1988 D.C. App. LEXIS 205 (1988).

Nine months of delay between defendant's arrest and trial attributable to defendant's interlocutory appeal of court order to give blood sample were defendant's own responsibility and did not count towards speedy trial claim. U.S. Const. Amend. 6. *Sanders v. United States*, 550 A.2d 343, 1988 D.C. App. LEXIS 205 (1988).

Ten-day delay in excess of one-year period for prima facie speedy trial violation was negligible. *Townsend v. United States*, 549 A.2d 724, 1988 D.C. App. LEXIS 196 (1988), writ of certiorari denied by 490 U.S. 1102, 109 S. Ct. 2457, 104 L. Ed. 2d 1011, 1989 U.S. LEXIS 2732, 57 U.S.L.W. 3792 (1989).

A delay of a year or more, before a defendant is brought to trial, gives prima facie merit to a claim of denial of the right to a speedy trial, and shifts the burden to the government to justify the delay. U.S.C. Const. Amend. 6. *Townsend v. United States*, 512 A.2d 994, 1986 D.C. App. LEXIS 380 (1986), writ of certiorari denied by 481 U.S. 1052, 107 S. Ct. 2188, 95 L. Ed. 2d 843, 1987 U.S. LEXIS 2150, 55 U.S.L.W. 3776 (1987).

Delay of 13 months between defendant's arrest and trial did not violate his Sixth Amendment right to speedy trial, where, although chargeable to Government, delay was due entirely to court congestion and routine processes, defendant did expressly assert his right, but

only shortly before trial, and although defendant did suffer some prejudice by reason of his eight months' incarceration, significance of that was diminished by fact that six and one-half of the eight months in jail were due in part to his own violation of court's initial conditions of release. U.S. Const. Amend. 6. *Miller v. United States*, 479 A.2d 862, 1984 D.C. App. LEXIS 430 (1984).

Because period between arrest and trial was longer than a year, Government had burden of establishing that defendant's right to a speedy trial was not violated. *Miller v. United States*, 479 A.2d 862, 1984 D.C. App. LEXIS 430 (1984).

Successive petitions.

Although at some point the limitation of subsection (e) on successive motions becomes applicable, strict principles of res judicata do not apply in proceedings under this section. *Pettaway v. United States*, App. D.C., 390 A.2d 981 (1978); *United States v. Hawkins*, 110 WLR 1577 (Super. Ct. 1982).

Prison inmate's second motion to vacate sentence was procedurally barred, as it was successive motion for relief similar to that inmate had sought in his first motion to vacate sentence, and, as such, trial court was not required to entertain it, under statute governing remedies on motion attacking sentence; inmate's present allegations that he was not competent to enter guilty plea and that his counsel had been ineffective for failing to request competency hearing were successive to those made in his first motion, and this motion was denied on the merits, which denial was affirmed on appeal. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

A motion to vacate sentence is "successive," such that court is not required to hear it under statute governing remedies on motion attacking sentence, if it raises claims identical to those raised and denied on the merits in a prior motion. *Bradley v. United States*, 881 A.2d 640, 2005 D.C. App. LEXIS 461 (2005), writ of certiorari denied by 546 U.S. 1190, 126 S. Ct. 1319, 164 L. Ed. 2d 83, 2006 U.S. LEXIS 1432, 74 U.S.L.W. 3473 (2006).

Accomplice's unsworn statement, that he committed armed robbery with someone other than defendant, was insufficient to show defendant's actual innocence, so as to survive summary denial of motion for postconviction relief as successive motion for similar relief as first motion that also raised ineffective assistance claim. *Dobson v. United States*, 815 A.2d 748, 2003 D.C. App. LEXIS 16 (2003).

Despite general rule that trial court is not required to entertain successive motions for

collateral relief on behalf of same prisoner, there are circumstances in which it serves interests of justice to consider new motion containing significant and potentially exculpatory information not previously available to defendant. *Arrington v. United States*, 804 A.2d 1068, 2002 D.C. App. LEXIS 483 (2002).

A prisoner who repeatedly filed frivolous pro se pleadings seeking post-trial relief based on arguments that he knew had been consistently denied or rejected in the past would be required to show cause why he should not be enjoined from filing further post-trial motions without first obtaining permission from the court to do so. *United States v. Anderson*, 126 WLR 805 (Super. Ct. 1998).

Sufficiency of hearing.

Trial court was not required to hold a longer hearing than it did on defendant's motion to vacate sentence based on defense counsel's alleged ineffectiveness in not calling purported alibi witnesses at a murder trial, even though defendant argued that trial court did not hear testimony from witnesses who provided affidavits and from defense counsel; trial court held a hearing to allow defendant to call witnesses who did not testify at his trial, both of the witnesses who were present testified, and trial court had affidavits from the other proposed alibi witnesses, some of whom had testified at trial. *Wright v. United States*, 979 A.2d 26, 2009 D.C. App. LEXIS 359 (2009).

Unjust imprisonment claims.

— Immunity of court officers, unjust imprisonment claims.

Judicial immunity to damages suit by criminal defendant who was sentenced and served imprisonment term in excess of statutory maximum extended to courtroom clerk. *McAllister v. District of Columbia*, 653 A.2d 849, 1995 D.C. App. LEXIS 12 (1995).

Judicial immunity to damages suit of sentencing judge and courtroom clerk, in suit by criminal defendant who was sentenced and served term in excess of statutory maximum was imputed to District of Columbia. *McAllister v. District of Columbia*, 653 A.2d 849, 1995 D.C. App. LEXIS 12 (1995).

— In general.

Relief under District of Columbia's Unjust Imprisonment Act, allowing claim against District for damages, is limited to persons who are convicted and subsequently imprisoned for offenses which they did not commit, and who can prove by clear and convincing evidence that they did not commit offense for which they were incarcerated or any other similarly imprisonable offense. D.C. Code 1981, § 1-1222. *McAllister v. District of Columbia*, 653 A.2d 849, 1995 D.C. App. LEXIS 12 (1995).

District of Columbia Unjust Imprisonment Act, allowing claim against District for damages, did not apply to inmate who was erroneously sentenced to term of imprisonment in excess of statutory maximum; inmate's sentence was corrected rather than having conviction reversed or set aside, inmate was not pardoned upon ground of innocence and unjust conviction, and defendant pled guilty to charged offense. D.C. Code 1981, §§ 1-1222, 1-1225. *McAllister v. District of Columbia*, 653 A.2d 849, 1995 D.C. App. LEXIS 12 (1995).

Waiver by defendant.

— Double jeopardy, waiver by defendant.

Defendant did not show cause for his failure to seek merger of convictions when he had the chance to do so on direct appeal, and thus did not meet requirements for motion to vacate sentence on double jeopardy grounds, although defendant claimed that trial counsel's failure to raise double jeopardy claim at sentencing was ineffective assistance of counsel, as defendant was represented by new counsel in his direct appeal, and he did not contend that his appellate counsel was constitutionally ineffective. *Brown v. United States*, 795 A.2d 56, 2002 D.C. App. LEXIS 74 (2002).

Constitutional immunity from double jeopardy is a personal right which, unless affirmatively pleaded, will be waived. *U.S. Const. Amend. 5. Wesley v. United States*, 449 A.2d 282, 1982 D.C. App. LEXIS 399 (1982).

Waiver of constitutional immunity from double jeopardy may be either express or implied and it will be implied where accused pleads not guilty and proceeds to trial, verdict and judgment without raising the defense of former jeopardy. *U.S. Const. Amend. 5. Wesley v. United States*, 449 A.2d 282, 1982 D.C. App. LEXIS 399 (1982).

In prosecution for grand larceny and unauthorized use of a motor vehicle, defendant waived any potential double jeopardy claim where he failed to raise the issue either in trial court or on his brief on appeal, and since no grave injustice was likely to result where defendant was sentenced to concurrent sentences for the two convictions. D.C. Code 1973, §§ 22-2201, 22-2204; *U.S. Const. Amend. 5. Wesley v. United States*, 449 A.2d 282, 1982 D.C. App. LEXIS 399 (1982).

— Fundamental rights, waiver by defendant.

Trial court acted within its discretion in determining that government did not act unreasonably in declining to grant immunity to witness, in prosecution for unauthorized use of a vehicle and receiving stolen property, even though government did not grant limited immunity to witness for purpose of deciding whether to grant use immunity to witness, and

trial court found that witness's testimony was exculpatory and unobtainable from any other source; witness refused to be questioned by government, and trial court heard from both sides, heard proffer of witness's testimony, and then made its discretionary ruling. *Butler v. United States*, 890 A.2d 181, 2006 D.C. App. LEXIS 2 (2006).

It is appropriate to grant a blanket Fifth Amendment privilege to a witness only when it is evident to the court that anything less will not adequately protect the witness, given a defendant's right to compulsory process under the Sixth Amendment; in other words, a blanket privilege should be recognized only in unusual cases in which the court determines that there is a reasonable basis for believing a danger to the witness might exist in answering any relevant question. *Butler v. United States*, 890 A.2d 181, 2006 D.C. App. LEXIS 2 (2006).

A defendant's Sixth Amendment right to call witnesses in his own defense is not absolute; in particular, it must yield to a witness's Fifth Amendment right to be free from compulsory self-incrimination. *Butler v. United States*, 890 A.2d 181, 2006 D.C. App. LEXIS 2 (2006).

Any error in trial court's failure to question witness and its subsequent grant of blanket Fifth Amendment privilege to witness was harmless error; in trial for unauthorized use of a vehicle and receiving stolen property, even though preferred procedure would have been to evaluate, on a question-by-question basis, the likelihood that witness's testimony might incriminate him; it was obvious that any testimony that witness might have been able to offer would have put him in stolen vehicle during events in question, thereby subjecting him to prosecution for unauthorized use of a vehicle as a passenger. *Butler v. United States*, 890 A.2d 181, 2006 D.C. App. LEXIS 2 (2006).

To determine whether the government has satisfied its heavy burden of showing that defendant validly waived his Miranda rights, the Court of Appeals looks to the totality of the circumstances. *Mesa v. United States*, 875 A.2d 79, 2005 D.C. App. LEXIS 256 (2005).

Defendant waived on appeal his argument that his Sixth Amendment rights were violated by failure of defense witness, who invoked her Fifth Amendment right against self incrimination, to testify on his behalf regarding car theft victim's alleged bias against defendant based on a supposed love triangle, where defense counsel never made a specific proffer concerning witness's possible testimony based on a supposed love triangle after she invoked her Fifth Amendment rights. *Brown v. United States*, 864 A.2d 996, 2005 D.C. App. LEXIS 2 (2005).

The Court of Appeals adheres to a strong presumption favoring adjudication of the merits, particularly where the liberty of a citizen is

at issue. *Watkins v. United States*, 846 A.2d 293, 2004 D.C. App. LEXIS 156 (2004).

Though the accused may waive his rights provided by Miranda and provide a statement to the police, when a defendant challenges the admissibility of such a statement, the government has the burden of proving that the waivers of privilege against self-incrimination and the right to counsel were made knowingly, intelligently, and voluntarily. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

When a defendant challenges the admissibility of his statement to police, the government must demonstrate that the defendant was warned and understood the basic touchstones of Miranda, including his right to an attorney, and thus, the government bears a heavy burden to show: that the defendant understood that in fact he had a right to the presence of counsel during an interrogation; and that the defendant intentionally relinquished or abandoned that known right. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

In order to determine whether defendant's waiver of his Miranda rights was made knowingly, intelligently, and voluntarily, appellate court had to must examine the particular facts and circumstances surrounding his case and the totality of the circumstances. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

Trial court should consider following factors when determining if defendant's waiver of his Miranda rights was made knowingly, intelligently, and voluntarily: defendant's prior experience with the legal system; the circumstances of the questioning; evidence of coercion or trickery resulting in a confession; any delay between arrest and confession; and intellectual capacity and education of defendant. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

In light of the fact that defendant was initially misinformed and confused as to what Miranda rights were, his waiver of those rights did not meet the knowing and intelligent standard; officer's embellishments and directives that defendant did not need a lawyer vitiated the validity of defendant's waiver, officers were aware of defendant's low intellectual capacity, and defendant was not familiar with the Miranda warnings. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

Trial court's admission of defendant's statements to police when defendant's waiver of Miranda rights did not meet the knowing and intelligent standard constituted reversible error; defendant's statements to police and defendant's leading police to location of gun and ammunition, in essence an admission by defen-

dant that he fired the weapon that night, might have contributed to the conviction. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

The failure to timely assert the right to call witnesses may result in the loss of an opportunity to call a witness; however, the waiver of this right is not to be inferred lightly. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Defendant's assertion that he was "groggy" during interrogation, and that police officer made "false promises and allegations," did not raise sufficient facts to warrant evidentiary hearing on alleged invalid waiver of Miranda rights and involuntary confession, in post-conviction proceeding. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

It is fundamental to due process that defendant who waives constitutional rights in entering guilty plea must do so voluntarily, knowingly, and intelligently. U.S.C. Const.Amend. 5, 14. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

Process due felony defendant who waives constitutional rights does not vary inversely in proportion to severity of charges. *Eldridge v. United States*, 618 A.2d 690, 1992 D.C. App. LEXIS 342 (1992).

There are certain fundamental and personal constitutional rights which may only be waived by defendant; thus, defendant must decide whether to plead guilty, whether to ask for jury trial, whether to appeal, and whether to forego assistance of counsel. U.S. Const.Amend. 6. *Boyd v. United States*, 586 A.2d 670, 1991 D.C. App. LEXIS 4 (1991).

General rule is that personal and fundamental right will be deemed waived only if there is record evidence demonstrating intentional relinquishment or abandonment of known right or privilege. *Boyd v. United States*, 586 A.2d 670, 1991 D.C. App. LEXIS 4 (1991).

— In general.

Defendant waived for appeal claim that he was entitled to hearing on motion for postconviction relief based on claim that counsel was ineffective for failure to obtain certain witnesses, despite prospective witnesses' alleged refusals to provide supporting affidavits, where defendant failed to seek trial court's assistance in securing evidence during time when motion for postconviction hearing was

pending. *Metts v. United States*, 877 A.2d 113, 2005 D.C. App. LEXIS 321 (2005).

Defendant waived on appeal his argument that trial court erred by failing to ask a defense witness, who invoked her Fifth Amendment rights, question by question, the basis on which she believed she might incriminate herself, where defense counsel did not object at trial to the court making a more general inquiry to determine whether the witness was eligible for immunity so she could testify on defendant's behalf. *Brown v. United States*, 864 A.2d 996, 2005 D.C. App. LEXIS 2 (2005).

By failing to raise issue in trial court, defendant waived any claim of error related to the failure to formally book him for drug offense for which he was indicted and convicted. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Trial judge's decision whether to conduct a *Freundak* inquiry into whether a defendant voluntarily and intelligently waived an insanity defense is reviewed for abuse of discretion. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

By pleading guilty to first-degree sexual abuse and kidnapping, defendant waived appellate review of contention that the trial court erred in refusing to grant a continuance to permit defense counsel to prepare adequately for trial and to allow defendant to consider a "combination" plea offer made by the government four days before the trial date. *Kyle v. United States*, 759 A.2d 192, 2000 D.C. App. LEXIS 215 (2000), writ of certiorari denied by 531 U.S. 1100, 121 S. Ct. 834, 148 L. Ed. 2d 716, 2001 U.S. LEXIS 569, 69 U.S.L.W. 3458 (2001).

Defendant who offered no evidence in his defense after his motion for judgment of acquittal following close of government's evidence did not waive his objection to denial of his motion. Criminal Rule 29(a). *Zanders v. United States*, 678 A.2d 556, 1996 D.C. App. LEXIS 122 (1996).

To successfully challenge alleged error on motion for new trial when error was not proffered for judicial consideration either at trial or on direct appeal, defendant had to show "cause" which excused failure to raise issue below and "actual prejudice" resulting from error of which he complained. D.C. Code 1981, § 23-110. *Smith v. United States*, 454 A.2d 822, 1983 D.C. App. LEXIS 295 (1983).

§ 23-111. Proceedings to establish previous convictions.

(a)(1) No person who stands convicted of an offense under the laws of the District of Columbia shall be sentenced to increased punishment by reason of one or more previous convictions, unless prior to trial or before entry of a plea of guilty, the United States attorney or the Corporation Counsel [Attorney

General for the District of Columbia], as the case may be, files an information with the clerk of the court, and serves a copy of such information on the person or counsel for the person, stating in writing the previous convictions to be relied upon. Upon a showing by the Government that facts regarding previous convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years, unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) If the prosecutor files an information under this section, the court shall, after conviction but before pronouncement of sentence, inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a previous conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c)(1) If the person denies any allegation of the information of previous conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the Government to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the prosecuting authority shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a previous conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d)(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of previous convictions, the court shall proceed to impose sentence upon him as provided by law.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is

invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the prosecutor, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by law. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(July 29, 1970, 84 Stat. 609, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Increased sentences for previous offenders, see §§ 22-1804 and 22-1804a.

Section references. — This section is referred to in § 11-721.

Prior Codifications. — 1981 Ed., § 23-111. 1973 Ed., § 23-111.

CASE NOTES

ANALYSIS

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Chemical dependents.

Burden of establishing eligibility for sentencing under addict exception to mandatory minimum sentencing provision rests entirely on defendant who invokes it. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

If possible existence of conviction disqualifying drug addict defendant from drug addict exception to mandatory minimum sentencing provision is made known to sentencing judge from any source, judge cannot ignore possible existence of disqualifying conviction, but rather, must advise defendant that such information has come to court's attention and give defendant opportunity to proffer prima facie evidence of his eligibility for sentencing under addict exception, that is, evidence that defendant has no disqualifying convictions. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Fact that government did not file information setting forth defendant drug addict's prior conviction was irrelevant to issue of whether prior conviction disqualified defendant from drug addict exception to mandatory minimum sentencing provision; enhanced penalty was not in-

volved in sentencing determination, and government was thus not required to file information alleging prior conviction to disqualify defendant from drug addict sentencing exception. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Court is not precluded from sentencing under drug addict exception to mandatory minimum sentencing provision by government's failure to file information indicating defendant drug addict's eligibility for such sentencing, provided that defendant proves his eligibility for such sentencing. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

A defendant's disqualifying prior conviction precluded sentencing under the addict exception of former § 33-541(c)(2) even where the prosecutor never files a recidivist information. *United States v. Mitchell*, 114 WLR 1257 (Super. Ct.).

Construction and application.

Statute under which mandatory minimum sentence increases according to defendant's prior drug convictions did not irreconcilably conflict with statute prohibiting increasing defendant's punishment based on convictions not included in United States Attorney's pretrial information and, thus, there was no implied repeal of statute prohibiting increased punishment. D.C. Code 1981, §§ 23-111, 33-541(c)(1)(A-1). *Lucas v. United States*, 602 A.2d 1107, 1992 D.C. App. LEXIS 35 (1992).

Defendant convicted of armed robbery was not improperly denied certain procedural rights guaranteed by statute before sentence may be enhanced on ground that trial court enhanced minimum term of his sentence due to prior robbery conviction, in that trial court did not state that minimum sentence was predicated upon defendant's prior robbery conviction, in-

formation citing to robbery committed in Maryland was on its face a nullity because enhancement statute expressly provides that prior crime must have been committed in District of Columbia, and minimum sentence was exactly one third of maximum sentence. D.C. Code 1981, §§ 22-3202(a)(2), 23-111(b), 24-203(a). *Brown v. United States*, 474 A.2d 161, 1984 D.C. App. LEXIS 371 (1984).

In imposing a more severe sentence on conviction of carrying a pistol without a license where defendant has suffered a prior similar conviction or a prior felony conviction, the mandatory statutory procedure must be followed. D.C. Code §§ 22-3204, 23-111. *Coleman v. United States*, 295 A.2d 896, 1972 D.C. App. LEXIS 268 (1972).

The Superior Court simply has no authority to impose an enhanced sentence without government compliance with subsection (a)(1) of this section, but where the defendant's sentence resulted from a very specific plea agreement that the defendant thoroughly understood, the Court may vacate defendant's guilty plea and the government may re prosecute him on any and all appropriate charges. *United States v. Short*, 111 WLR 81 (Super. Ct. 1983).

Court was limited to sentencing defendant as a first offender because the government had not filed enhancement papers. *United States v. Williams*, 116 WLR 1005 (Super. Ct.).

Cross-examination of defendant.

Consistent with statutory requirement for proof of a prior conviction, prosecutor may not cross-examine a defendant about a prior conviction unless the prosecutor has a certificate under seal or trial judge has ruled in advance of the cross-examination or offer of proof *alunde*; once defendant has denied a conviction, no further questioning about that conviction shall be permitted except in accordance with such ruling by trial judge. D.C. Code 1981, §§ 14-305, 14-305(b, c). *Reed v. United States*, 485 A.2d 613, 1984 D.C. App. LEXIS 577 (1984).

In prosecution for unlawful distribution of and possession with intent to distribute heroin, prosecution's impeachment of defendant with prior rape, attempted rape, and assault convictions, which was not in accordance with statute requiring a certificate under seal, was harmless error, as defendant was properly impeached with other convictions, evidence against defendant was very strong, and jury was instructed to ignore the improper impeachment. D.C. Code 1981, §§ 14-305(b, c), 33-541(a)(1). *Reed v. United States*, 485 A.2d 613, 1984 D.C. App. LEXIS 577 (1984).

Prosecutor was not required to lay foundation by cross-examining defendant about his credibility prior to impeaching him with prior convictions. D.C. Code 1981, §§ 14-305, 14-

305(b). *Reed v. United States*, 485 A.2d 613, 1984 D.C. App. LEXIS 577 (1984).

When party establishing a conviction by means of cross-examination is met with a denial, party posing the question must be prepared to prove the conviction. D.C. Code 1981, §§ 14-305, 14-305(b). *Reed v. United States*, 485 A.2d 613, 1984 D.C. App. LEXIS 577 (1984).

Hearing.

There is no statutory requirement in sentence enhancement proceedings that defendant be placed under oath to raise issues of proof, nor is there any statutory requirement that any inquiry of any sort be made of defendant during hearing phase of recidivist sentencing process. D.C. Code 1981, §§ 22-104a(b)(2), 23-111(c)(1). *Boswell v. United States*, 511 A.2d 29, 1986 D.C. App. LEXIS 360 (1986).

As respects allegation of defendant, charged with armed robbery and carrying dangerous weapon, that his absence from status hearing, at which defense counsel was served with information revealing Government's intention to seek additional punishment under recidivist statute, deprived defendant of meaningful right to participate in plea bargaining, evidence established that counsel fully advised his client; furthermore, there was no absolute right to bargain. D.C. Code §§ 22-2901, 22-3202, 22-3202(a)(2), 22-3204, 23-111. *Smith v. United States*, 356 A.2d 650, 1976 D.C. App. LEXIS 533 (1976).

Indictment and information.

Notice of prior conviction need not be included in an indictment for offense of carrying pistol without a license to be sentenced as a felony, since fact of a prior conviction is neither an element of the offense charged nor necessary to double jeopardy protection. D.C. Code § 23-111; U.S. Const. Amend. 5. *Punch v. United States*, 377 A.2d 1353, 1977 D.C. App. LEXIS 389 (1977), writ of certiorari denied by 435 U.S. 955, 98 S. Ct. 1586, 55 L. Ed. 2d 806, 1978 U.S. LEXIS 1401 (1978).

A sentence under the recidivist statute is not a part of the offense itself; it is the possible punishment for the latter which determines whether the prosecution must be by indictment; recidivist statute comes into play after the trial and after accused has been found guilty and proceedings thereunder do not involve inquiry into guilt or innocence. D.C. Code § 23-111, U.S. Const. Amend. 5. *Smith v. United States*, 304 A.2d 28, 1973 D.C. App. LEXIS 268 (1973), writ of certiorari denied by 414 U.S. 1114, 94 S. Ct. 846, 38 L. Ed. 2d 741, 1973 U.S. LEXIS 1888 (1973).

Eighteen months' sentence for petit larceny, a misdemeanor, did not constitute punishment for the offense itself and thus did not cause the

noninfamous offense, which may be prosecuted by information, to be transformed later into an infamous offense which must be prosecuted by indictment, unless waived. D.C. Code §§ 22-2202, 23-111; U.S. Const. Amend. 5; D.C. Code SCR, Criminal Rule 7(a, b). *Smith v. United States*, 304 A.2d 28, 1973 D.C. App. LEXIS 268 (1973), writ of certiorari denied by 414 U.S. 1114, 94 S. Ct. 846, 38 L. Ed. 2d 741, 1973 U.S. LEXIS 1888 (1973).

Limitations of actions.

Defendant's challenge to his 24-month prison sentence for unlawful distribution of controlled substance based on government's failure to file mandatory information and notice raised claim that sentence was imposed in illegal manner, rather than that sentence was illegal, and, thus, his claim was subject to 120-day limitations period. *Ruffin v. United States*, 25 A.3d 1, 2011 D.C. App. LEXIS 372 (2011).

Official records.

Document entitled "certificate of No Record of Firearms Registration Certificate," under seal of chief of police, expressly designating supervisor of firearms registration section as chief's deputy, and containing supervisor's attestation that records were in supervisor's custody and control, complied with Criminal Rule of superior court governing proof of official records, notwithstanding allegation that document failed to include separate certificate from custodian of records. Criminal Rules 27, 27(a)(1). *Willingham v. United States*, 467 A.2d 742, 1983 D.C. App. LEXIS 510 (1983).

Retrospective and ex post facto laws.

Repeat offender sentencing statute was not an unconstitutional ex post facto law as applied in the circumstances of the instant case, even though defendant committed the offense which formed the basis for the enhanced penalty after the crime for which he received the enhanced sentence. D.C. Code 1973, § 22-104(a); U.S.C. Const. Art. 1, § 9, cl. 3. *Cornwell v. United States*, 451 A.2d 628, 1982 D.C. App. LEXIS 458 (1982).

Review.

— In general.

Trial court's error, in enhancing defendants' sentences for prior convictions without first engaging in colloquy required by statutory provision governing enhancement of sentences, did not require resentencing or reversal of sentences of counts where defendants were sentenced within the normal range of penalties absent an enhancement. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003),

remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Where sentence was within statutory maximum, it was not subject to appellate review. *Lagon v. United States*, 442 A.2d 166, 1982 D.C. App. LEXIS 300 (1982).

— Orders subject to review.

Court of Appeals lacked jurisdiction over defendant's appeal from Superior Court hearing commissioner's resentencing decision made after Superior Court judge vacated original sentence and remanded to commissioner upon finding that commissioner erred in failing to consider defendant's prior sentences; upon remand, commissioner was faced with range of possible courses of action and was required and empowered to do more than just impose sentence he actually imposed, only when he did so was matter ripe for review by Superior Court judge, and it was only after such review that appeal could be taken to Court of Appeals. D.C. Code 1981, § 11-1732(k). *Bratcher v. United States*, 604 A.2d 858, 1992 D.C. App. LEXIS 60 (1992).

Superior Court judge's order vacating sentence and remanding to Superior Court hearing commissioner for resentencing, on ground that commissioner was required to consider defendant's prior convictions, was not requisite "review" which would permit defendant to appeal hearing commissioner's resentencing decision to Court of Appeals; judge's order did not preordain result, but simply ruled that commissioner erred in his interpretation of law, and commissioner was required to do more than simply impose sentence. D.C. Code 1981, § 11-1732(k). *Bratcher v. United States*, 604 A.2d 858, 1992 D.C. App. LEXIS 60 (1992).

Superior Court judge's order remanding to Superior Court hearing commissioner for resentencing was itself not appealable; in criminal case, appeal may not be taken until after pronouncement of sentence. D.C. Code 1981, § 11-721(a)(1). *Bratcher v. United States*, 604 A.2d 858, 1992 D.C. App. LEXIS 60 (1992).

— Remand, review.

Government's error in failing to file required information seeking enhanced penalties before jury selection process began was plain error, and thus trial court improperly imposed enhancing seven-year mandatory minimum penalty on defendant convicted of distribution of heroin; there was no record evidence that defendant was placed on notice of government's intent to file enhancement papers in time to afford him an adequate opportunity to determine whether to plead guilty or proceed to trial. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Where trial court proceeded under the wrong statute, which provided a five-year mandatory

minimum sentence for a second conviction of a crime of violence while armed when in fact defendant's previous convictions were not for crimes of violence while armed, in sentencing defendant to eight to 30 years for armed robbery with consecutive sentences for other offenses, thereby curtailing its independent sentencing discretion, it was necessary to remand for resentencing, even though sentence of the length imposed could have been imposed under the correct statute. D.C. Code § 22-3202(a)(1, 2). *Fields v. United States*, 396 A.2d 990, 1979 D.C. App. LEXIS 286 (1979), US Supreme

Court certiorari denied by 464 U.S. 998, 104 S. Ct. 497, 78 L. Ed. 2d 690, 1983 U.S. LEXIS 2545, 52 U.S.L.W. 3422 (1983).

— **Reservation of grounds for review.**

Government's failure in trial court to raise argument that challenge to sentence should have been raised on direct appeal justified decision not to consider argument on appeal from denial of motion to vacate sentence. *Coleman v. United States*, 628 A.2d 1005, 1993 D.C. App. LEXIS 175 (1993).

§ 23-112. Consecutive and concurrent sentences.

A sentence imposed on a person for conviction of an offense shall, unless the court imposing such sentence expressly provides otherwise, run consecutively to any other sentence imposed on such person for conviction of an offense, whether or not the offense (1) arises out of another transaction, or (2) arises out of the same transaction and requires proof of a fact which the other does not.

(July 29, 1970, 84 Stat. 610, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Theft and other crimes, prohibition of consecutive sentences, see § 22-3203.

Prior Codifications. — 1981 Ed., § 23-112. 1973 Ed., § 23-112.

CASE NOTES

ANALYSIS

Construction and application.

Double jeopardy.

—Different offenses in same transaction, double jeopardy.

—In general.

—Merger of offenses, double jeopardy.

—Multiple punishments for same act, double jeopardy.

—Sentencing, double jeopardy.

Juveniles.

Lesser included offenses.

Probation.

Review.

—In general.

—Scope of review.

Construction and application.

Two offenses are separate and distinct when each criminal provision violated requires proof of an additional fact which the other does not. *Jones v. United States*, App. D.C., 401 A.2d 473 (1979); *United States v. Dixon*, 117 WLR 9 (Super. Ct. 1989).

Sentencing guideline controlling sentence under multiple-count conviction permits court to impose sentence greater than statutory maximum of any one count. U.S.S.G. § 5G1.2(d), 18 U.S.C. *United States v. Ali*, 897 F. Supp. 267,

1995 U.S. Dist. LEXIS 13010 (1995), affirmed without opinion by 92 F.3d 1182, 1996 U.S. App. LEXIS 28050 (4th Cir. Va. 1996).

Sentence on one count of multicount conviction may be imposed as part consecutive to and part concurrent with sentence imposed on another count. 18 U.S.C. § 3584; U.S.S.G. § 5G1.2(d), 18 U.S.C. *United States v. Ali*, 897 F. Supp. 267, 1995 U.S. Dist. LEXIS 13010 (1995), affirmed without opinion by 92 F.3d 1182, 1996 U.S. App. LEXIS 28050 (4th Cir. Va. 1996).

Combined sentence of 140 months was imposed upon defendant convicted of possession of firearm by convicted felon and possession of unregistered firearm, even though maximum term by their individual offense was 120 months; 140-month sentence was within guideline range and 20 months of sentence for second offense was imposed to be consecutive with sentence imposed on first offense. 18 U.S.C. § 922(g); 26 U.S.C. § 5861(d); U.S.S.G. §§ 2K2.1(a)(1), 5G1.2(d), 18 U.S.C. *United States v. Ali*, 897 F. Supp. 267, 1995 U.S. Dist. LEXIS 13010 (1995), affirmed without opinion by 92 F.3d 1182, 1996 U.S. App. LEXIS 28050 (4th Cir. Va. 1996).

Under a fact-based analysis of double jeopardy, whether separate criminal acts have occurred depends upon whether they can be

found to be factually separate. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

For purposes of fact-based merger analysis under Double Jeopardy Clause, criminal acts are considered separate when there is an appreciable length of time between the acts that constitute the two offenses, or when a subsequent criminal act was not the result of the original impulse, but a fresh one. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

The crimes of burglary in the first degree while armed and robbery while armed are separate and distinct offenses and because each offense requires proof of a fact that the other does not, consecutive sentencing following convictions for both is permissible. *United States v. Venable*, 111 WLR 2241 (Super. Ct.).

Double jeopardy.

— Different offenses in same transaction, double jeopardy.

Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, for double jeopardy purposes, is whether each provision requires proof of a fact which the other does not. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

Offenses of assault with intent to kill and malicious disfigurement are governed by separate statutes and each statutory provision requires proof of element which other does not. D.C. Code 1981, §§ 22-501, 22-506, 22-3202. *Wilson v. United States*, 528 A.2d 876, 1987 D.C. App. LEXIS 392 (1987).

Defendant, convicted of pouring flammable liquid accelerant over victim and lighting it, could properly be prosecuted and convicted for both first-degree premeditated murder and felony-murder. D.C. Code §§ 22-2401, 23-112. *McFadden v. United States*, 395 A.2d 14, 1978 D.C. App. LEXIS 349 (1978).

In prosecution for armed robbery and for assault with a dangerous weapon, trial court did not erroneously permit jury to return a separate verdict on assault with a dangerous weapon charge, where evidence disclosed that after armed robbery of cash register of store defendant forced victim at gunpoint to walk to rear of store where she was searched and on leaving defendant warned victim about possibility of being shot if she came out before defendant got out of store. D.C. Code § 23-112. *Bates v. United States*, 327 A.2d 542, 1974 D.C. App. LEXIS 297 (1974).

Individual acts of raping alleged victim by defendant, codefendant, and coperpetrators did not coalesce into single continuing offense for double jeopardy purposes; evidence indicated

that defendant, codefendant, and coperpetrators took turns sexually assaulting and raping alleged victim over an extended period of time that involved changes in location and stops to purchase more condoms. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

Test to be applied to determine possible double jeopardy problems when government is seeking to convict defendant of two distinct statutory provisions arising out of same act or transaction, to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

— In general.

The Double Jeopardy Clause prohibits a second prosecution for a single crime and protects against multiple punishments for the same offense. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

The Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States safeguards a defendant from multiple trials or successive prosecutions or multiple punishments for the same offense. *Johnson v. United States*, 763 A.2d 707, 2000 D.C. App. LEXIS 297 (2000).

Double Jeopardy Clause protects against second prosecution for same offense after acquittal, second prosecution for same offense after conviction, and multiple punishments for same offense. U.S. Const. Amend. 5. *Freeman v. United States*, 600 A.2d 1070, 1991 D.C. App. LEXIS 334 (1991).

In view of facts that in prosecution of defendant for three counts of "threats" and four counts of "obstructing justice" instructions indicated that only one of the four essential elements of an obstruction of justice charge involved proof of "threats", that proof of "threats" was not absolutely necessary to defendant's conviction since proof of force would also have led to his conviction, and that defendant was acquitted of threats against one witness, although the jury found him guilty of obstructing justice with regard to the same conduct towards the same witness, proof of guilt on the obstruction of justice counts did not necessarily establish guilt of the "threats" counts, and therefore defendant's convictions of both offenses did not constitute double jeopardy. D.C. Code §§ 22-703(a), 22-2307; U.S. Const. Amend. 5. *Ball v. United States*, 429 A.2d 1353, 1981 D.C. App. LEXIS 262 (1981).

— Merger of offenses, double jeopardy.

Convictions for reckless driving and fleeing from law enforcement officer did not merge, for sentencing purposes; reckless driving did not require proof that defendant was fleeing from

police officer, and even if basis for fleeing charge was reckless driving, jury in defendant's case found that defendant not only engaged in reckless driving, but also caused property damage to stolen vehicle, which was not an element of reckless driving. *Fox v. United States*, 11 A.3d 1282, 2011 D.C. App. LEXIS 24 (2011).

Each of defendant's and codefendant's convictions for destroying property, armed carjacking, and unauthorized use of a vehicle did not merge into one crime for double jeopardy purposes; despite fact that crime spree engaged in by defendant and codefendant extended over several hours, many of their crimes occurred after significant breaks in time, changes of location, and opportunities to reformulate criminal intent. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

Each of defendant's and codefendant's two convictions for kidnapping and first-degree sexual abuse did not merge for double jeopardy purposes; each offense had at least one element that the other did not have. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

Once each of defendant's and codefendant's convictions for two counts of armed robbery merged, each of their related convictions for two counts of possession of a firearm during a crime of violence also merged for double jeopardy purposes, as they were based on the two armed robbery charges. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

When there is an appreciable period of time between the acts on which two criminal convictions are based, there is no merger for double jeopardy purposes, even if the interval is quite brief. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

Conviction for simple assault did not merge with conviction for attempted second-degree child cruelty; the child cruelty offense required proof that the act was committed upon a child while simple assault did not have the same requirement, and simple assault required an act involving "force or violence" while child cruelty could be committed by "maltreating a child." *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct. 2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

The rule of lenity did not require the imposition of concurrent sentences for defendant's convictions for simple assault and attempted second-degree child cruelty; offenses were distinct and did not merge for sentencing purpose, and statute provided for consecutive sentences for two or more offense that arose out of a single criminal act. *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct.

2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

Under Blockburger test for double jeopardy, whether there are two offenses for which punishment may be imposed or only one depends upon whether each provision requires proof of a fact which the other does not. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

A fact-based approach to double jeopardy remains appropriate where a defendant is convicted of two violations of the same statute. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

That an assault is accomplished by several blows or methods does not mean that multiple crimes and sentences may be imposed, under Double Jeopardy Clause. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

Where there are duplicate convictions for the same offense, one or more must be vacated in order that only one conviction and sentence remains for a single offense, under Double Jeopardy Clause. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

Blockburger rule for determining whether two criminal convictions merge is to be applied in analysis of multiple punishment issues in absence of clear indication of contrary legislative intent. D.C. Code 1981, § 23-112. *Allen v. United States*, 697 A.2d 1, 1997 D.C. App. LEXIS 124 (1997).

In determining whether offenses of taking indecent liberties with minor child, enticing minor child for purpose of taking indecent liberties, and assault with intent to commit sodomy (AWIS) merged, court was required to look only to elements of each offense, rather than facts of case as alleged in indictment or adduced at trial. D.C. Code 1981, §§ 22-503, 22-3501(a, b), 22-3502, 23-112. *Hicks v. United States*, 658 A.2d 200, 1995 D.C. App. LEXIS 95 (1995).

If assault and armed robbery charges are triggered by separate acts, convictions do not merge for double jeopardy purposes. D.C. Code 1981, §§ 22-502, 22-2901, 22-3202; U.S.C. Const.Amend. 5. *Simms v. United States*, 634 A.2d 442, 1993 D.C. App. LEXIS 304 (1993).

Test to be applied in assessing whether convictions merge for double jeopardy purposes turns on statutory elements of particular violation, rather than on evidence adduced at trial or specific facts of case. U.S.C. Const.Amend. 5. *Simms v. United States*, 634 A.2d 442, 1993 D.C. App. LEXIS 304 (1993).

Assault with dangerous weapon conviction merged, for double jeopardy purposes, with armed robbery conviction; victim was struck with hard object to quiet him during robbery; perpetrators were still transporting proceeds of

robbery, perpetrators had previously threatened victim with bodily harm, and there was no indication that robbery had ended when victim was struck. D.C. Code 1981, §§ 22-502, 22-2901, 22-3202; U.S. Const. Amend. 5. *Simms v. United States*, 634 A.2d 442, 1993 D.C. App. LEXIS 304 (1993).

Simultaneous violation of statute defining crime of possession of a firearm during a dangerous crime and statute enhancing penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon does not constitute a single offense for double jeopardy purposes, and resulting convictions do not merge; second statute requires proof that perpetrator exercise a degree of dominion and control not required for conviction under first statute; also, first statute requires proof that instrument possessed was either a firearm or an imitation firearm, while second statute proscribes any instrument found to be a dangerous weapon, which can include but is not limited to firearms and their imitations; thus, each provision requires proof of a fact not required under the other. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Thomas v. United States*, 602 A.2d 647, 1992 D.C. App. LEXIS 23 (1992).

Where same act or transaction constitutes a violation of two distinct statutory provisions, test to be applied to determine whether there are two offenses or only one for double jeopardy purposes, is whether each provision requires proof of an additional fact which the other does not. U.S. Const. Amend. 5. *Thomas v. United States*, 602 A.2d 647, 1992 D.C. App. LEXIS 23 (1992).

Absent clear legislative intent, in situations where same act or transaction constitutes violation of two distinct statutory provisions, test to be applied to determine whether there are two offenses or only one, for purposes of double jeopardy clause, is whether each provision requires proof of fact which the other does not and if only one of statutes requires an additional element, offenses merge. U.S. Const. Amend. 5; D.C. Code 1981, § 23-112. *Norris v. United States*, 585 A.2d 1372, 1991 D.C. App. LEXIS 26 (1991).

Unauthorized use of vehicle was lesser included offense of armed robbery on the facts, and unauthorized use conviction thus merged with armed robbery conviction; automobile was the item stolen in armed robbery, and the unauthorized use was essentially no more than the nonconsensual asportation element of the armed robbery. U.S. Const. Amend. 5; D.C. Code 1981, § 23-112. *Kingsbury v. United States*, 537 A.2d 208, 1988 D.C. App. LEXIS 40 (1988).

Punishment for both first-degree burglary while armed and first-degree felony-murder predicated on armed robbery did not violate double jeopardy clause, where armed burglary

charge required government to prove at least one fact that felony-murder did not, i.e., that defendant entered dwelling or other building, apartment or room, and felony-murder charge required proof of at least one fact that armed burglary did not, i.e., that defendant killed another person. D.C. Code 1981, §§ 22-1801(a), 22-3202, 22-2401, 23-112; U.S. Const. Amend. 5. *Waller v. United States*, 531 A.2d 994, 1987 D.C. App. LEXIS 456 (1987).

Conviction and imposition of sentence for both unauthorized use of vehicle and grand larceny of same vehicle violated double jeopardy clause as unauthorized use of vehicle conviction was merged into grand larceny conviction. U.S. Const. Amend. 5. *Garris v. United States*, 491 A.2d 511, 1985 D.C. App. LEXIS 375 (1985).

Mayhem was not lesser included offense of, and did not merge into, felony-murder on theory that defendant's act of burning victim was simply the means of killing him. D.C. Code §§ 22-506, 22-2401, 23-112. *McFadden v. United States*, 395 A.2d 14, 1978 D.C. App. LEXIS 349 (1978).

— Multiple punishments for same act, double jeopardy.

Absent clear legislative intent to allow multiple punishments for the same act, courts must apply Blockburger test to determine whether two offenses merge for double jeopardy purposes. U.S. Const. Amend. 5. *Simms v. United States*, 634 A.2d 442, 1993 D.C. App. LEXIS 304 (1993).

Where legislature intends to impose multiple punishments for same offense, multiple punishments do not violate Double Jeopardy Clause. U.S. Const. Amend. 5. *Freeman v. United States*, 600 A.2d 1070, 1991 D.C. App. LEXIS 334 (1991).

Double jeopardy clause protects against multiple punishments for same offense. U.S.C. Const. Amend. 5. *Wilson v. United States*, 528 A.2d 876, 1987 D.C. App. LEXIS 392 (1987).

If Congress intended to impose multiple punishments when more than one statutory violation arises from single act, imposition of multiple punishments does not violate double jeopardy clause. U.S. Const. Amend. 5. *Wilson v. United States*, 528 A.2d 876, 1987 D.C. App. LEXIS 392 (1987).

While a convicted defendant cannot receive multiple punishments for the same offense under the double jeopardy clause, the double jeopardy clause does not prohibit separate and cumulative punishment for separate criminal acts. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

— Sentencing, double jeopardy.

Conviction for killing in the course of a rape cannot be had without proving all the elements

of the offense of rape so that consecutive punishments for killing in the course of rape and rape are not authorized under District of Columbia law. D.C. Code §§ 22-2401, 22-2404, 22-2801, 23-112. *Whalen v. U.S.*, 100 S.Ct. 1432, 1980 U.S. LEXIS 15 (U.S. Dist. Col. 1980).

While dual convictions of defendant for first-degree murder and premeditated murder arising out of one killing was permissible, defendant could not be given consecutive sentences for both. D.C. Code §§ 22-2401, 23-112. *United States v. Ammidown*, 497 F.2d 615, 1974 U.S. App. LEXIS 8696 (C.A.D.C. 1973).

Even when concurrent sentences are imposed, the Double Jeopardy Clause precludes duplicate convictions because of the potential adverse collateral consequences of the convictions. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

The Double Jeopardy Clause of the Fifth Amendment does not prohibit separate and cumulative punishment for separate criminal acts. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

Where it is clear that defendant has committed more than one criminal act, there is no constitutional bar to imposition of separate punishments for each act. U.S. Const. Amend. 5. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Double Jeopardy Clause of Fifth Amendment does not prohibit separate and cumulative punishment for separate criminal acts. U.S.C. Const. Amend. 5. *Hanna v. United States*, 666 A.2d 845, 1995 D.C. App. LEXIS 202 (1995).

Imposing consecutive sentences on defendant convicted of conspiracy to commit robbery and attempted robbery did not violate double jeopardy; each offense required proof of fact that the other did not. D.C. Code 1981, §§ 22-105a, 22-2901, 22-2902, 23-112; U.S.C. Const. Amend. 5. *Robinson v. United States*, 608 A.2d 115, 1992 D.C. App. LEXIS 122 (1992).

Defendant can properly be convicted of both unauthorized use of vehicle (UUV) and receiving stolen property (RSP) arising out of same act or course of conduct, even though State is statutorily precluded from consecutively sentencing a defendant upon convictions for RSP and UUV arising out of same act or course of conduct. D.C. Code 1981, §§ 22-3803, 22-3815, 22-3832, 23-112; U.S. Const. Amend. 5. *Byrd v. United States*, 598 A.2d 386, 1991 D.C. App. LEXIS 283 (1991).

Imposition of two separate and concurrent sentences for convictions of assault with intent to kill while armed and malicious disfigurement while armed was not barred by double jeopardy clause. U.S. Const. Amend. 5. *Wilson v. United States*, 528 A.2d 876, 1987 D.C. App. LEXIS 392 (1987).

Shooting of victim following attempted robbery of victim invaded separate interest and

therefore was separate offense, and thus, imposition of consecutive sentences for convictions of assault with intent to commit robbery while armed and assault with dangerous weapon was permissible under double jeopardy clause. D.C. Code 1981, §§ 22-501, 22-502, 22-3202, 23-112; U.S. Const. Amend. 5. *Owens v. United States*, 497 A.2d 1086, 1985 D.C. App. LEXIS 477 (1985), writ of certiorari denied by 474 U.S. 1085, 106 S. Ct. 861, 88 L. Ed. 2d 900, 1986 U.S. LEXIS 1161, 54 U.S.L.W. 3484 (1986).

Single killing may give rise to convictions for both premeditated murder and felony-murder, so long as concurrent sentences are imposed. D.C. Code 1981, § 23-112. *Harling v. United States*, 460 A.2d 571, 1983 D.C. App. LEXIS 374 (1983).

Concurrent as well as consecutive sentences constitute multiple punishment for purposes of double jeopardy, and a concurrent sentence for conviction of a separate offense, while not entailing a lengthier incarceration, nonetheless implicates possible collateral consequences which effectively result in "multiple" or "cumulative" punishment. U.S. Const. Amend. 5. *Ball v. United States*, 429 A.2d 1353, 1981 D.C. App. LEXIS 262 (1981).

Juveniles.

Upon sentencing of defendant on multiple charges under the Youth Rehabilitation Act (YRA), sentences would run consecutively unless the sentencing judge provided otherwise; adult sentencing rule requiring multiple sentences to be served consecutively, unless the judge specified otherwise, also applied to sentences under the YRA. D.C. Code 1981, §§ 23-112, 24-801 et seq. *Bragdon v. United States*, 717 A.2d 878, 1998 D.C. App. LEXIS 177 (1998).

Lesser included offenses.

For purposes of imposing cumulative sentences under District of Columbia law, Congress intended rape to be considered a lesser offense included within the offense of a killing in the course of a rape. D.C. Code §§ 22-2401, 22-2404, 22-2801, 23-112. *Whalen v. U.S.*, 100 S.Ct. 1432, 1980 U.S. LEXIS 15 (U.S. Dist. Col. 1980).

Probation.

To be effective, probation must be concurrent with a coordinate term of suspension of sentence. Code 1950, §§ 19.2-303, 19.2-306. *Hartless v. Commonwealth*, 29 Va. App. 172, 510 S.E.2d 738, 1999 Va. App. LEXIS 135 (1999).

Review.

— In general.

No appeal from conviction being noted within time prescribed and no reason for failure to

note such an appeal being alleged, events at trial were not properly before Court of Appeals on review of denial of motion to have consecutive sentences run concurrently. D.C. Code Court of Appeals, rule 4 II (b)(1). *Banks v. United States*, 307 A.2d 767, 1973 D.C. App. LEXIS 318 (1973).

— **Scope of review.**

Appellate court would not review sentences which were within statutory limits on the ground that those sentences were too severe. D.C. Code 1981, §§ 22-3501, 22-3502. *Crawford v. United States*, 628 A.2d 1002, 1993 D.C. App. LEXIS 172 (1993).

On appeal from criminal conviction, the Court of Appeals may decide only whether the sentence imposed was legally permissible and once the court has determined that the sen-

tence was permitted by law, the severity of the sentence may not be questioned. *Jones v. United States*, 401 A.2d 473, 1979 D.C. App. LEXIS 351 (1979).

The Court of Appeals is precluded from reviewing a trial court's decision to impose consecutive sentences or, for that matter, concurrent sentences for two separate offenses. *Jones v. United States*, 401 A.2d 473, 1979 D.C. App. LEXIS 351 (1979).

If a sentence is within limits set by statute, the Court of Appeals may not reduce the sentence. *Jones v. United States*, 401 A.2d 473, 1979 D.C. App. LEXIS 351 (1979).

A sentence which is within statutorily prescribed limits will generally not be reviewed in appellate courts. *Banks v. United States*, 307 A.2d 767, 1973 D.C. App. LEXIS 318 (1973).

§ 23-112a. Notice at sentencing of child support modification.

(a) At all sentencing proceedings in which an individual will be sentenced for a period of imprisonment of more than 30 days, or at any proceeding in which a judge is revoking probation that will result in a sentence of imprisonment of more than 30 days, the sentencing court shall inquire as to whether the individual being sentenced is subject to a child support order. If the individual being sentenced is subject to a child support order, the sentencing court shall explain that:

(1) The individual being sentenced may petition to modify or suspend child support payments during the period of the individual's imprisonment; and

(2) Child support payments will continue to accrue under the order unless the order is modified or suspended.

(b) The court shall provide each individual being sentenced with a copy of a pro se petition to modify the child support order pursuant to § 46-204. The petition may be filed in open court during sentencing. The petition shall be deemed filed in the case in which the child support order was entered as of its filing in open court, and the petition shall be included in the records of that case.

(c) The clerk of the Court shall effectuate service of the petition in accordance with § 46-206.

(May 24, 2005, D.C. Law 15-357, § 102(b), 52 DCR 1999.)

Legislative history of Law 15-357. — Law 15-357, the “Omnibus Public Safety Ex-offender Self-sufficiency Reform Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-785, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on Novem-

ber 9, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-744 and transmitted to both Houses of Congress for its review. D.C. Law 15-357 became effective on May 24, 2005.

§ 23-113. Limitations on actions for criminal violations.

(a) *Time limitations.* —

(1) A prosecution for the following crimes may be commenced at any time:

(A) murder in the first or second degree (D.C. Official Code §§ 22-2101 and 2102 [22-2102]);

(B) murder in the second degree (D.C. Official Code § 22-2103);

(C) murder of a law enforcement officer or public safety employee (D.C. Official Code § 22-2106);

(D) first degree murder that constitutes an act of terrorism (D.C. Official Code § 22-3153(a));

(E) second degree murder that constitutes an act of terrorism (D.C. Official Code § 22-3153(c)); and

(F) murder of a law enforcement officer or public safety employee that constitutes an act of terrorism (D.C. Official Code §§ 22-3153(b)).

(2) A prosecution for the following crimes and any offense that is properly joinable with any of the following crimes is barred if not commenced within fifteen (15) years after it is committed:

(A) first degree sexual abuse (D.C. Official Code § 22-3002);

(B) second degree sexual abuse (D.C. Official Code § 22-3003);

(C) first degree child sexual abuse (D.C. Official Code § 22-3008); and

(D) second degree child sexual abuse (D.C. Official Code § 22-3009).

(3) A prosecution for the following crimes and any offense that is properly joinable with any of the following crimes is barred if not commenced within ten (10) years after it is committed:

(A) third degree sexual abuse (D.C. Official Code § 22-3004);

(B) fourth degree sexual abuse (D.C. Official Code § 22-3005);

(C) enticing a child for the purpose of committing felony sexual abuse (D.C. Official Code § 22-3010);

(D) first degree sexual abuse of a ward (D.C. Official Code § 22-3013);

(E) second degree sexual abuse of a ward (D.C. Official Code § 22-3014);

(F) first degree sexual abuse of a patient or client (D.C. Official Code § 22-3015);

(G) second degree sexual abuse of a patient or client (D.C. Official Code § 22-3016);

(H) using a minor in a sexual performance or promoting a sexual performance by a minor (D.C. Official Code § 22-3102);

(I) incest (D.C. Official Code § 22-1901); and

(J) Trafficking in labor or commercial sex and sex trafficking of children as prohibited by [D.C. Official Code §§ 22-1833 and 22-1834], respectively;

(K) Section [D.C. Official Code § 22-2704];

(L) Section [D.C. Official 22-2705]; and

(M) Sections [D.C. Official Code §§ 22-2706 and 22-2708].

(4) Except as provided in paragraph (6), a prosecution for a felony other than those crimes enumerated in paragraphs (1) through (3) is barred if not commenced within six (6) years after it is committed.

(5) Except as provided in paragraph (6), a prosecution for any other criminal offense is barred if not commenced within three (3) years after it is committed.

(6) A prosecution for a felony or a misdemeanor may be brought within three (3) years:

(A) after a public officer or employee has left office, for any completed offense based on official conduct; or

(B) after a fraud or breach of fiduciary trust has been, or reasonably should have been, discovered for any completed offense based on that fraud or breach of fiduciary trust; even if barred by the provisions of paragraphs (4) and (5):

Provided, that, in no case shall this provision extend the period of limitations to more than nine (9) years in the case of a felony nor more than six (6) years in the case of a misdemeanor.

(b) *Time when offense committed.* — An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct, or the defendant's complicity therein, is terminated. Time starts to run on the day after the offense is committed or completed.

(c) *Commencement of prosecution.* — A prosecution is commenced when:

(1) an indictment is entered;

(2) an information is filed; or

(3) a complaint is filed before a judicial officer empowered to issue an arrest warrant; provided, that such warrant is issued without unreasonable delay. A prosecution for an offense necessarily included in the offense charged shall be considered to have been timely commenced, even though the period of limitation for such included offense has expired, if the period of limitation has not expired for the offense charged and if there was, after the close of the evidence at trial, sufficient evidence as a matter of law to sustain a conviction for the offense charged.

(d) *Suspension of period of limitation.* —

(1) The period of limitation for an offense, and any necessarily included offense, does not run during any time when a prosecution against the defendant for that offense is pending in the courts of the District of Columbia.

(2) The period of limitation shall not begin to run until the victim reaches 21 years of age for the following offenses:

(A) first degree child sexual abuse (D.C. Official Code § 22-3008);

(B) second degree child sexual abuse (D.C. Official Code § 22-3009);

(C) enticing a child for the purpose of committing felony sexual abuse (D.C. Official Code § 22-3010);

(D) using a minor in a sexual performance or promoting a sexual performance by a minor (D.C. Official Code § 22-3102);

(E) incest (D.C. Official Code § 22-1901); and

(F) Sections [D.C. Official Code 22-3009.01 and 22-3009.02];

(G) Section [D.C. Official Code § 22-2704];

(H) Section [D.C. Official Code § 22-2705];

(I) Section [D.C. Official Code § 22-2706], where the victim is a minor;

and

(J) Forced labor, trafficking in labor or commercial sex, sex trafficking of children, and benefitting financially from human trafficking as prohibited by the Human Trafficking Act [D.C. Law 18-239], where the victim is a minor.

(3) The period of limitation shall not begin to run for first degree sexual abuse of a ward (D.C. Official Code § 22-3013) or second degree sexual abuse of a ward (D.C. Official Code § 22-3014) until the victim is no longer a ward.

(4) The period of limitation shall not begin to run for first degree sexual abuse of a patient or client (D.C. Official Code § 22-3015) or second degree sexual abuse of a patient or client (D.C. Official Code § 22-3016) until the victim is no longer a patient or client of the actor.

(5) The period of limitation shall not begin to run for forced labor, trafficking in labor or commercial sex, sex trafficking of children, and benefitting financially from human trafficking until the victim is no longer subject to the means used to obtain or maintain his or her labor or services or commercial sex acts.

(e) *Extended period for commencement of new prosecution.* — If a timely complaint, indictment, or information is dismissed for any error, defect, insufficiency, or irregularity, a new prosecution may be commenced within three (3) months after the dismissal becomes final even though the period of limitation has expired at the time of the dismissal or will expire within three (3) months thereafter.

(f) *Fugitives from justice.* — No statute of limitations shall extend to any person fleeing from justice.

(Apr. 30, 1982, D.C. Law 4-104, §§ 2, 3, 29 DCR 1401; Oct. 17, 2002, D.C. Law 14-194, § 156(a), 49 DCR 5306; May 10, 2005, D.C. Law 15-356, § 2, 52 DCR 1176; Apr. 24, 2007, D.C. Law 16-306, § 224(b), 53 DCR 8610; Oct. 23, 2010, D.C. Law 18-239, § 206(a), 57)

Prior Codifications. — 1981 Ed., § 23-113.

Effect of amendments. — D.C. Law 14-194 rewrote subsec. (a)(1) which had read as follows: “(1) A prosecution for murder in the first or second degree may be commenced at any time.”

D.C. Law 15-356 rewrote subsecs. (a) and (d).

D.C. Law 16-306, in subsecs. (a)(2) and (3), inserted “and any offense that is properly joinable with any of the following crimes” following “A prosecution for the following crimes”.

D.C. Law 18-239, in subsec. (a)(3), deleted “and” from the end of subpar. (H), substituted “; and” for a period the end of subpar. (I), and added subpars. (J) to (M); and, in subsec. (d)(2), deleted “and” from the end of subpar. (D), substituted “; and” for a period the end of subpar. (E), and added subpars. (F) to (J) and par. (d)(5).

Emergency legislation. — For temporary (90 day) amendment of section, see § 224(b) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of sec-

tion, see § 224(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 224(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 224(b) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 4-104. — Law 4-104, the “District of Columbia Criminal Statute of Limitations Act of 1982,” was introduced in Council and assigned Bill No. 4-121, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 9, 1982, and February 23, 1982, respectively. Signed by the Mayor on March 10, 1982, it was assigned Act No. 4-165 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-194. — Law 14-194, the “Omnibus Anti-Terrorism Act of 2002”, was introduced in Council and assigned Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

Legislative history of Law 15-356. — Law 15-356, the “Felony Sexual Assault Statute of Limitations Act of 2004”, was introduced in Council and assigned Bill No. 15-785, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-634 and transmitted to both Houses of Congress for its review. D.C. Law 15-356 became effective on May 10, 2005.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 23-104.

Legislative history of Law 18-239. — Law 18-239, the “Prohibition Against Human Trafficking Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-70, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on March 16, 2010, and June 1, 2010, respectively. Signed by the Mayor on June 21, 2010, it was assigned Act No. 18-444 and transmitted to both Houses of Congress for its review. D.C. Law 18-239 became effective on October 23, 2010.

Editor’s notes. — Section 4 of D.C. Law 15-356 provided as follows: “Sec. 4. Applicability. This act shall apply to an offense committed before its effective date only if the statute of limitations for the offense has not expired prior to the effective date.”

CASE NOTES

ANALYSIS

Continuing offenses.
Double jeopardy.
Ex post facto laws.
Homicide.
Speedy trial.
Welfare fraud.

Continuing offenses.

Since prison breach is a “continuing offense” six-year criminal statute of limitations did not bar defendant’s prosecution following his indictment for the offense eight and one-half years later. D.C. Code 1981, § 23-113. *Craig v. United States*, 551 A.2d 440, 1988 D.C. App. LEXIS 224 (1988).

Double jeopardy.

Double jeopardy did not bar subsequent prosecution for second-degree murder of defendant who had been acquitted of assault with intent to kill while armed arising from same incident and involving same victim, where victim had not died at time defendant was prosecuted for assault, and jury at first trial was not presented with question of malice. D.C. Code 1981, §§ 22-501, 22-502, 22-2403, 22-3202; U.S. Const. Amend. 5. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

Ex post facto laws.

Prosecution, following abrogation of year and a day rule, for murder of victim who died more than year and a day after date of attack was barred by ex post facto clause. D.C. Code 1981, §§ 22-2403, 22-3202; U.S. Const. Art. 1, § 9, cl.

3. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

Homicide.

Even though Congress codified elements of first and second-degree murder in District of Columbia, common-law year and day rule, under which an assailant may be prosecuted for homicide only if victim dies within a year and a day of the injury inflicted, was law in District of Columbia. D.C. Code 1981, §§ 22-2401, 22-2403, 49-301. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

Prosecution for murder was not barred by fact that victim died more than one year and a day after attack. D.C. Code 1981, §§ 22-2403, 22-3202. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

Speedy trial.

Although the expiration of the limitations period during the time a prosecution is pending does not pose a statute of limitations problem for the government upon dismissal of a case pursuant to statute, the passage of time may very well constitute a violation of a defendant’s constitutional right to a speedy trial, and a defendant has the right to make such a challenge. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

Welfare fraud.

Extension of statute of limitations for sexual abuse effected by Felony Sexual Assault Act, as applied to prosecution of defendant for his first offense, did not violate the Ex Post Facto Clause; prior to expiration of six-year period set

forth in former statute of limitations, statute was amended to increase limitations period to 15 years, statute of limitations for defendant's sexual abuse charge was extended before it had expired, and extension of limitations period neither aggravated a crime nor made it greater than it was, since defendant was never free from prosecution. *Thomas v. U.S.*, 2012 WL 1207422 (2012).

Twenty-two-days was reasonable time for

discovery of welfare fraud, and, thus, statute of limitations had not started to run when defendant was charged with welfare fraud. *Harris v. District of Columbia*, 991 A.2d 1199, 2010 D.C. App. LEXIS 147 (2010).

Statute of limitations had not started running on continuing welfare fraud until offense was completed when benefits were terminated. *Harris v. District of Columbia*, 991 A.2d 1199, 2010 D.C. App. LEXIS 147 (2010).

§ 23-114. Corroboration of a child witness' testimony not required.

For purposes of prosecutions brought under Title 22 of the D.C. Official Code, independent corroboration of the testimony of a child victim is not required to warrant a conviction.

(May 3, 1985, D.C. Law 5-196, § 2(b), 31 DCR 5977.)

Cross references. — Abducting or enticing children from home for purposes of prostitution and harboring such children, see § 22-2704.

Cruelty to children, definition and penalty, see § 22-1101.

Sexual abuse, see § 22-3001 et seq.

Sexual performances using minors, see § 22-3101 et seq.

Prior Codifications. — 1981 Ed., § 23-114.

Legislative history of Law 5-196. — Law

5-196, the "Child Abuse Reform Act of 1984," was introduced in Council and assigned Bill No. 5-426, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 12, 1984, and October 23, 1984, respectively. Signed by the Mayor on November 8, 1984, it was assigned Act No. 5-204 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Construction and application.
Report of rape rule.

Construction and application.

Uncorroborated testimony by complainant, who had been nine years old at time of alleged offense, that defendant placed his penis in complainant's mouth and anus and fondled complainant's penis was sufficient to raise jury issue in prosecution for committing indecent act with child under age of 16 and for oral and anal sodomy; independent corroboration was not required. D.C. Code 1981, §§ 22-3501, 22-3502, 23-114. *Barrera v. United States*, 599 A.2d 1119, 1991 D.C. App. LEXIS 323 (1991).

Evidence was for jury in prosecution for committing indecent act with child under age of 16 and for oral and anal sodomy, even if independent corroborating evidence was needed along with testimony of complainant, who was nine years old at time of alleged offense; issue was for jury, even though defense attempted to discredit and rebut circumstantial evidence. D.C. Code 1981, §§ 22-3501, 22-3502, 23-114.

Barrera v. United States, 599 A.2d 1119, 1991 D.C. App. LEXIS 323 (1991).

Report of rape rule.

Under the report of rape rule, a witness may testify that the complainant stated that a sexual crime occurred and may relate the detail necessary to identify the crime. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

Report of rape rule under which hearsay testimony concerning sexual assault complaint by victim is admissible survives abolition of corroboration requirement in sex crime prosecutions, as other rationales for rule survive; evidence of complaint negates jurors' assumptions that if there is no evidence of complaint, no complaint was made; such evidence negates prejudices by showing that victim behaved as society traditionally has expected such victims to act, and it rebuts implied charge of recent fabrication. *Battle v. United States*, 630 A.2d 211, 1993 D.C. App. LEXIS 216 (1993).

While hearsay testimony concerning victim's report of sexual assault can properly, under report of rape rule, provide information about

victim's report sufficient to identify nature of offense, its time and place, and perpetrator of alleged assault, such testimony cannot go fur-

ther in describing details of assault. *Battle v. United States*, 630 A.2d 211, 1993 D.C. App. LEXIS 216 (1993).

CHAPTER 3. INDICTMENTS AND INFORMATIONS.

Subchapter I. General Provisions

Sec.

23-301. Prosecution by indictment or information.

Subchapter II. Joinder

23-311. Joinder of offenses and of defendants.

23-312. Joinder of indictments or informations for trial.

23-313. Relief from prejudicial joinder.

23-314. [Repealed].

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Sec.

23-321. Description of money.

23-322. Intent to defraud.

23-323. Perjury.

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Subchapter IV. Fictitious Name Indictments

23-331. Fictitious name indictments for first or second degree sexual abuse or first or second degree child sexual abuse.

Subchapter I. General Provisions.

§ 23-301. Prosecution by indictment or information.

An offense prosecuted in the Superior Court which may be punished by death shall be prosecuted by indictment returned by a grand jury. An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, but it may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment. Any other offense may be prosecuted by indictment or by information. An information subscribed by the proper prosecuting officer may be filed without leave of court.

(July 29, 1970, 84 Stat. 611, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Public passenger vehicles, penalties for unlawful conduct, see § 35-253.

Prior Codifications. — 1981 Ed., § 23-301. 1973 Ed., § 23-301.

CASE NOTES

ANALYSIS

Amendment of indictment.

Discretion as to charge.

Due process.

Grand jury.

Necessity of indictment.

Probable cause.

Review.

Successive indictments.

Sufficiency of indictment.

Variance.

Amendment of indictment.

A variance of an indictment becomes a constructive amendment when facts introduced at trial go to an essential element of the offense charged, and the facts are different from the facts that would support the offense charged in the indictment, or when the possible bases for conviction have somehow been broadened.

Zacarias v. United States, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

An "amendment" of an indictment occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them. Zacarias v. United States, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

Misdemeanor sexual abuse indictment, which alleged sexual touching of victim's genitalia, was not constructively amended in light of evidence presented that he touched victim's inner thigh; it could not fairly be said that defendant was convicted on the basis of a complex of facts "distinctly different" from facts alleged by grand jury, as events reflected in trial judge's findings and those alleged in indictment occurred on same day, at the same time, at the same location, and between same individuals, and common sense dictated that to reach victim's genitalia, defendant's hand in all

probability touched her inner thigh. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

The constructive amendment of an indictment infringes on a defendant's constitutional right not to be prosecuted for a felony for which no grand jury has indicted him; in such cases, reversal per se is mandated, without the need for any showing of prejudice. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

A constructive amendment of the indictment occurs if, and only if, the prosecution relies at trial on a complex of facts distinctly different from that which the grand jury set forth in the indictment. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

Guilty plea to first-degree theft, rather than first-degree burglary, with respect to one charged incident did not amount to a constructive amendment of indictment, but rather an amendment of government's plea offer, where charge to which defendant was allowed to plead guilty was already contained in indictment. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Allowing defendant to plead guilty to robbery rather than assault with intent to rob was improper "constructive amendment" of indictment. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

A constructive amendment of an indictment is not a structural error. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Defendant was not prejudiced by constructive amendment to indictment that occurred when he entered guilty plea to robbery rather than charged offense of assault with intent to rob, and thus that constructive amendment was not "plain error"; penalties for the two offenses were identical, defendant received maximum sentence available under either statute, and defendant's version of charged incident admitted conduct that constituted assault with intent to commit robbery as an aider or abettor. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

A constructive amendment of an indictment in violation of the Fifth Amendment is not waived by a guilty plea. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS

721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Assuming that evidence and jury instruction plainly amended language of indictment charging defendant with aggravated assault, by applying to and quoting from subsection of aggravated assault statute other than that under which defendant was charged, such amendment posed no risk to fairness, integrity or public reputation of judicial proceedings and was not plain error, where indictment included citation that encompassed both subsections of aggravated assault statute, and evidence amply supported defendant's conviction. *Smith v. United States*, 801 A.2d 958, 2002 D.C. App. LEXIS 366 (2002), writ of certiorari denied by 537 U.S. 1011, 123 S. Ct. 479, 154 L. Ed. 2d 413, 2002 U.S. LEXIS 8233, 71 U.S.L.W. 3318 (2002).

A "literal amendment" of indictment occurs when the trial court strikes a specific, relevant allegation the grand jury charged, an allegation necessary to prove the offense, so that the defendant can be convicted without proof of that allegation. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

A "constructive amendment" of the indictment occurs when the trial court permits the jury to consider under the indictment an element of the charge that differs from the specific words of the indictment. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

Discretion as to charge.

A defendant has no constitutional right to elect which of two applicable statutes is to be the basis of his indictment and prosecution. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

While the prosecutor, in cases in which two statutes proscribe the same conduct, must ultimately choose one statute in order to avoid the bar to duplicative punishments, that choice need not be made at the charging stage. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

Since there is no prohibition to simultaneous prosecution under two different statutes prohibiting the same conduct, the prosecutor may charge for both offenses in a single indictment or information. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

When two statutory provisions cover the same conduct, a determination of which of the two statutes to prosecute under is within the discretion of the prosecuting authority. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

If the facts show a violation of two or more statutes, an election may be made to prosecute

under either. *Evans v. United States*, 779 A.2d 891, 2001 D.C. App. LEXIS 169 (2001).

Where conduct relied upon to prove violation of felony statute is identical to conduct prescribed by misdemeanor statute, conduct does not have to be prosecuted as misdemeanor rather than as a felony. *United States v. Young*, 376 A.2d 809, 1977 D.C. App. LEXIS 352 (1977).

Where conduct prescribed by felony statute is identical to conduct prescribed by misdemeanor statute, defendant cannot complain because charge against him is brought under statute carrying more severe penalty. *United States v. Young*, 376 A.2d 809, 1977 D.C. App. LEXIS 352 (1977).

If facts show that conduct constituted violation of both felony statute and misdemeanor statute, an election may be made to prosecute under either statute; discretion to choose under which statute to prosecute is broad and vested in prosecuting attorney and grand jury. *United States v. Young*, 376 A.2d 809, 1977 D.C. App. LEXIS 352 (1977).

Where both a felony statute and a misdemeanor statute cover identical conduct, courts are obliged to permit enforcement of both statutes in the absence of an express statement of congressional intent. *United States v. Young*, 376 A.2d 809, 1977 D.C. App. LEXIS 352 (1977).

Due process.

It is a violation of the Fifth Amendment for a defendant to be convicted of an offense with which he has not been charged in the indictment or other charging document. *Johnson v. United States*, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Grand jury.

A defendant cannot be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him. *Zacarias v. United States*, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

The grand jury has the ultimate responsibility to determine whether there is probable cause to believe a crime has been committed, and in aid of that function it has extraordinary investigative powers. In *re Public Defender Serv.*, 831 A.2d 890, 2003 D.C. App. LEXIS 550 (2003).

The grand jury can generally compel the production of evidence or testimony of witnesses through the issuance of subpoenas. In *re Public Defender Serv.*, 831 A.2d 890, 2003 D.C. App. LEXIS 550 (2003).

Grand jury proceedings have traditionally been kept secret, and this seal of secrecy en-

sures the grand jury's proper functioning. In *re Public Defender Serv.*, 831 A.2d 890, 2003 D.C. App. LEXIS 550 (2003).

Although murder defendant's conversations with attorney about witness's allegedly coerced statements were protected by the attorney-client privilege, and the grand jury could not require attorney to testify as to those conversations, any written statements coerced by third parties were amenable to subpoena by the grand jury, subject to the possibility that defendant had a valid Fifth Amendment privilege to assert for the act of production. In *re Public Defender Serv.*, 831 A.2d 890, 2003 D.C. App. LEXIS 550 (2003).

Once grand jury has determined that probable cause exists to believe the defendant has committed each element of the offense which the Government will be required to prove during presentation of case to the trier of fact at trial, it has completed its required function. D.C. Code § 23-301; U.S. Const. Amend. 5. *Punch v. United States*, 377 A.2d 1353, 1977 D.C. App. LEXIS 389 (1977), writ of certiorari denied by 435 U.S. 955, 98 S. Ct. 1586, 55 L. Ed. 2d 806, 1978 U.S. LEXIS 1401 (1978).

Grand jury is an arm of judicial rather than executive branch of government. *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Necessity of indictment.

Though denominated a misdemeanor by statute, prescribed penalty of up to five years imprisonment made offense of "three-card monte and confidence games" prosecutable only by indictment. D.C. Code §§ 22-1506, 23-301; 18 U.S.C. § 1. *United States v. Brown*, 309 A.2d 256, 1973 D.C. App. LEXIS 345 (1973).

Probable cause.

An indictment returned by a legally constituted and unbiased grand jury, if valid on its face, is enough to call for trial of charge on merits; Fifth Amendment requires nothing more. U.S. Const. Amend. 5. *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

A valid grand jury indictment conclusively determines existence of probable cause to hold accused for trial. D.C. Code SCR, Criminal Rule 5(c)(2). *United States v. Davis*, 330 A.2d 751, 1975 D.C. App. LEXIS 302 (1975).

Review.

In reviewing whether an indictment has been constructively amended, the appellate court's standard of review requires it to consider whether the government at trial relied on a complex of facts distinctly different from that which the grand jury set forth in the indictment, rather than a single set of facts common to both. *Zacarias v. United States*, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

Where the defense has eschewed any claim of prejudicial variance in the indictment, even as a fall-back position, and has made no attempt to show prejudice, reversal upon a ground not asserted either at trial or on appeal cannot be justified. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

A defendant who fails to object to an error in an indictment in a pre-trial motion waives the right to challenge the indictment on appeal unless it is so deficient as to be totally lacking in the statement of offense. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

When no objection is made during trial to alleged defects in indictment, appellate court's review is limited to determining (1) whether the indictment sets forth the elements of the offense, and (2) if so, whether the claimed flaw prejudiced the defense. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Error was harmless in allowing anonymous detective to provide orientation information to the grand jury, after it was empaneled but before it considered distribution of cocaine case against defendant, without his being sworn; the violation had no substantial influence on the grand jury's decision to indict. *Williams v. United States*, 757 A.2d 100, 2000 D.C. App. LEXIS 191 (2000).

In evaluating whether the indictment has been amended, appellate court compares the evidence and the judge's instruction to the jury with the charge specified in the indictment. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

Where an objection has been made in the trial court, a constructive amendment of an indictment is reversible error. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

Where defendant did not assert that indictment was defective but court granted motion to dismiss, filed more than four months after preliminary hearing, solely on ground that judge handling hearing abused discretion in denying defendant's request to compel testimony of complaining witness and that trial judge at status hearing erred in denying second request for such testimony from witness who died after status hearing and where dismissal was taken as alternative to ordering preliminary hearing and as device to get appellate resolution of case, dismissal of indictment was reversible error. D.C. Code SCR, Criminal Rules 12(b)(2), 47-1(c). *United States v. Davis*, 330 A.2d 751, 1975 D.C. App. LEXIS 302 (1975).

Successive indictments.

There is no prohibition to simultaneous prosecutions under different statutes prohibiting

the same conduct, even though in the end the defendant could not stand convicted of both. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

Dismissal of indictment for failure to charge offense does not give rise to bar of res judicata in another action involving same offense and does not preclude government from a subsequent prosecution on good indictment. *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Second indictment which was valid on its face was all that was required for trial of the charges on merits. *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Dismissal of original armed robbery indictment which charged only that defendant "stole" for failure to charge specific intent to steal was not a final judgment on the merits; thus, doctrine of collateral estoppel did not make dismissal of first indictment conclusive as to sufficiency of second indictment which used identical wording. D.C. Code §§ 22-2901, 22-3202. *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Before a trial court's dismissal of an indictment can be deemed res judicata so as to bar a subsequent indictment, it must be shown that first decision was made on the merits. *Washington v. United States*, 366 A.2d 457, 1976 D.C. App. LEXIS 408 (1976).

Pendency of grand jury indictment charging assault with a dangerous weapon did not prohibit a second grand jury from considering and returning indictment charging not only the same count of assault with a dangerous weapon but the additional count of carrying a dangerous weapon, regardless of whether prior grand jury refused to return a bill charging the offense of carrying a dangerous weapon or simply did not consider such offense. D.C. Code SCR, Criminal Rule 105(b)(1). *United States v. Johnson*, 328 A.2d 769, 1974 D.C. App. LEXIS 318 (1974).

Sufficiency of indictment.

When an indictment charges that the offense occurred on or about a certain date, a defendant is on notice that a particular date is not critical; the evidence will conform to the indictment in such circumstances if it establishes that the offense was committed on a date reasonably close to the one alleged. *Williams v. United States*, 859 A.2d 130, 2004 D.C. App. LEXIS 452 (2004).

Failure to state specific date on which offenses allegedly occurred in charging information did not render information unconstitutionally broad; information charged him with engaging in misdemeanor sexual abuse between two specific dates and again between two specific dates, it included elements of offense of

misdeemeanor sexual abuse and cited relevant code provision that defined offense, and thus defendant had fair notice of charges against him was informed of range of dates when offenses were alleged to have taken place. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Two-part test for determining the validity of an indictment or information, against a claim that it is overly broad, is whether it gives the defendant adequate notice of the charges against him so that he can prepare a defense and whether, if he is later charged with a similar offense, he may successfully assert a claim of double jeopardy; in general, when the indictment or information meets these standards, it is immaterial whether it could have been made more definite and certain. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Sufficiency of an indictment is determined by (1) whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and (2) whether the record adequately shows that the defendant may plead a former acquittal or conviction in the event any other proceedings are initiated against him later for a similar offense; if that standard is met, possibility that the indictment could have been made more definite and certain is not material. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Even if defective, an indictment which adequately protects interests of fair notice of the charges and avoidance of future prosecutions will not be dismissed. *Persall v. United States*, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

Requirement that indictment contain plain, concise and definite written statement of the essential facts constituting the crime charged eschews emphasis on technical requirements and deficiencies, casting some of the burden on a defendant to pursue additional details, if needed, by way of a bill of particulars. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

The indictment serves two chief purposes, first to apprise the accused of the charges against him, so that he may adequately prepare his defense, and second to describe the crime with which he is charged with sufficient specificity to enable him to protect against future jeopardy for the same offense. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

When an indictment charges that an offense occurred "on or about" a date or range of dates, the evidence will conform to the indictment in

such circumstances if it establishes that the offense was committed on a date reasonably close to the one alleged. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

Indictment charging defendant with threatening to injure another person and her property was not insufficient because it failed to charge that offense was committed knowingly and intentionally. D.C. Code § 22-2307. *United States v. Young*, 376 A.2d 809, 1977 D.C. App. LEXIS 352 (1977).

Indictment which follows substantially language of statute making it a felony to threaten to injure person and property of another, which particularized the date of offending conduct and stated species of unlawful communication at issue, i.e., a threat, was sufficient to charge an offense under such statute even though indictment did not contain actual words of alleged threat or allege that threats were made knowingly and intentionally. D.C. Code § 22-2307. *United States v. Young*, 376 A.2d 809, 1977 D.C. App. LEXIS 352 (1977).

An indictment must inform accused of charge against him by listing elements of offense charged and be sufficiently specific to protect accused against double jeopardy. *United States v. Young*, 376 A.2d 809, 1977 D.C. App. LEXIS 352 (1977).

Variance.

A "variance" of an indictment occurs when the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment. *Zacarias v. United States*, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

A variance between allegations in an indictment and the evidence at trial is prejudicial if it either deprives the defendant of an adequate opportunity to prepare a defense—i.e., fails to give him proper notice of the crime with which he is charged—or exposes him to the risk of another prosecution for the same offense, which would violate the Double Jeopardy Clause of the Constitution. *Zacarias v. United States*, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

A mere variance between allegations in an indictment and the evidence at trial does not warrant reversal unless the appellant shows prejudice. *Zacarias v. United States*, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

A deviation between the charges in an indictment and the proof at trial can constitute a variance from, or an amendment, either literal or constructive, of the indictment. *Zacarias v. United States*, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

A variance in an indictment may be prejudicial if the accused was so surprised by the proof that he was unable to prepare his defense

adequately. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

A variance occurs when the facts proved at trial materially differ from the facts alleged in the indictment but the essential elements of the offense are the same. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

A variance becomes a constructive amendment when facts introduced at trial go to an essential element of the offense charged, and the facts are different from the facts that would support the offense charged in the indictment. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

The distinction between a constructive amendment and a variance is not always precise, and to evaluate whether an indictment has been constructively amended, the court must compare the evidence and the instructions to the jury with the charge specified in the indictment. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

Even though there was variance between misdemeanor sexual abuse indictment, which alleged sexual touching of victim's genitalia and evidence presented at trial that defendant touched victim's inner thigh, defendant, whose

sole defense was consent, neither claimed prejudice nor made any evidentiary showing that variance impaired his defense. *Carter v. United States*, 826 A.2d 300, 2003 D.C. App. LEXIS 302 (2003).

A "variance" occurs when the facts proved at trial materially differ from the facts contained in the indictment but the essential elements of the offense are the same. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

A variance will not warrant dismissal except upon a showing of prejudice. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

Prejudice resulting from a variance, warranting dismissal, is normally considered to be present if there is danger that the accused will be prosecuted a second time for the same offense, or that he was so surprised by the proof that he was unable to prepare his defense adequately. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

A defendant's failure to ask for a continuance following variance between proof and indictment may defeat a claim of surprise, necessary for dismissal. *Williams v. United States*, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

Subchapter II. Joinder.

§ 23-311. Joinder of offenses and of defendants.

(a) Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Two or more offenses may be charged in the same indictment or information as provided in subsection (a) even though one or more is in violation of the laws of the United States and another is in violation of the laws applicable exclusively to the District of Columbia and may be prosecuted as provided in section 11-502(3).

(c) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

(July 29, 1970, 84 Stat. 611, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Aggregation of theft, fraud, and credit card fraud offenses, see § 22-3202.

Prior Codifications. — 1981 Ed., § 23-311. 1973 Ed., § 23-311.

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Codefendants.

— Absence of codefendants.

Denial of defendant's motion for severance of trial from that of codefendant after codefendant failed to appear was not abuse of discretion, where defendant's guilt or innocence was not inextricably linked to that of codefendant; circumstances did not suggest that jury would unjustifiably infer that both parties were guilty based on codefendant's absence, as defendant had defended murder charge on basis that she had been coerced into participating in crime by codefendant. *Russell v. United States*, 586 A.2d 695, 1991 D.C. App. LEXIS 21 (1991).

— Burglaries, codefendants.

In view of possibility that jury misused evidence, factors common to two burglaries were not sufficiently unusual and distinctive to create reasonable probability that same person committed both offenses, and thus to make it proper to admit evidence of the one offense upon trial for the other, though each burglary involved nighttime entry of occupied dwelling

place by two young Negro males who demanded money and expressed interest in drugs, each entry was facilitated by means of ruse which involved third person, victims were either threatened or physically assaulted and one intruder other than defendant in question was identified by nickname "Papa", and the offenses therefore should have been severed for trial for defendant in question. D.C. Code §§ 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Evans v. United States*, 392 A.2d 1015, 1978 D.C. App. LEXIS 327 (1978).

— Disparity in weight of evidence against codefendants.

Evidence of defendant's participation in murder was more than de minimis, so that denial of motion for severance was not abuse of discretion, where testimony of eye witness placed defendant in murder victim's apartment and described her actions in assisting boyfriend in committing crime, including her threats against eyewitness. *Russell v. United States*, 586 A.2d 695, 1991 D.C. App. LEXIS 21 (1991).

Severance is not required simply because there is more evidence to convict one of multiple defendants; manifest prejudice occurs from denial of severance only where evidence of defendant's complicity in overall criminal venture is de minimis when compared to evidence against codefendant. *Russell v. United States*, 586 A.2d 695, 1991 D.C. App. LEXIS 21 (1991).

Where assault and weapon charges against one defendant were distinct in time and place from charges of first-degree murder while armed, brought against other defendants, and evidence of murder was overwhelmingly major portion of five-week trial while there was comparatively meager evidence on assault and weapon charges, and evidence of murder would not have been admissible at separate trial of particular defendant on assault and weapon charges, it was error to deny severance. D.C. Code §§ 22-502, 22-2401, 22-3202, 22-3204, 23-311(c); D.C. Code SCR, Criminal Rule 8(b). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

— Homicides, codefendants.

Severance of defendants' murder trials from that of codefendant who apparently enlisted defendants in a plan to murder victim was not warranted, in light of effect of admission of codefendant's statements and letters and restrictions placed upon admission of evidence of another homicide in which codefendant might have been involved, and in light of fact that

defendants' defenses were not otherwise irreconcilable. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Joint trial of defendant for second-degree murder while armed and assault with a deadly weapon with codefendant charged with second-degree murder while armed did not cause jury to be inflamed against defendant by evidence of murder; it was undisputed that defendant cut victim on the wrist prior to his being stabbed by codefendant in the chest, and jury acquitted each of defendants for murder, convicting defendant instead of assault with deadly weapon and codefendant of assault with intent to kill while armed. D.C. Code 1981, §§ 22-501, 22-502, 22-2403, 22-3202, 23-311. *Jackson v. United States*, 650 A.2d 659, 1994 D.C. App. LEXIS 218 (1994).

— In general.

Presumption that two defendants when charged with jointly committing criminal offense will be jointly tried may be rebutted where: (1) there are irreconcilable defenses so that jury will unjustifiably infer that this conflict alone demonstrates that both are guilty; (2) one codefendant is seeking to call codefendant as exculpatory witness; or (3) where evidence against one of parties is *de minimis*. D.C. Code 1981, § 23-311. *Jackson v. United States*, 650 A.2d 659, 1994 D.C. App. LEXIS 218 (1994).

There are exceptions to rule that defendants who are charged with jointly committing crime should be tried together, as where evidence of one defendant's complicity in crime is *de minimis* as compared to that of codefendant, where defendant wishes to call codefendant as exculpatory witness, or where defendants offer conflicting and irreconcilable defenses, so that jury will unjustifiably infer that this conflict alone demonstrates that both are guilty. *Russell v. United States*, 586 A.2d 695, 1991 D.C. App. LEXIS 21 (1991).

Courts closely scrutinize joinder for trial of offense occurring at different place and at different time from capital offense also charged, and problem becomes all more vexing when joinder of offenses relates to different defendants. D.C. Code SCR, Criminal Rules 8(b), 14; D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316

(1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

— Indictment and information, codefendants.

Joinder of defendants, one charged with a misdemeanor and the other with a felony in connection with carrying a deadly weapon, could be accomplished by filing an information against the former and, upon indictment of his codefendant moving for joinder. D.C. Code § 22-3204; D.C. Code SCR, Criminal Rule 8(b). *Freeman v. Smith*, 301 A.2d 217, 1973 D.C. App. LEXIS 228 (1973).

— Irreconcilable defenses, codefendants.

To require severance, defendants were required to show more than that codefendants whose strategies were generally antagonistic were tried together; they were at least required to demonstrate that conflict was so prejudicial that differences were irreconcilable and that jury would unjustifiably infer that conflict alone demonstrated that both were guilty. Fed.Rules Crim.Proc. rules 8(b), 14, 30, 18 U.S.C. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Essence of trial judge's duty on motion for severance is to determine whether alleged antagonism between codefendants is counterproductive to normal reasons for trying cases jointly. Fed.Rules Crim.Proc. rules 8(b), 14, 18 U.S.C. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Taking into account overall considerations of judicial economy, trial judge did not abuse her discretion in denying severance, though one defendant contended that the other placed upon him chief responsibility for the crimes. Fed.Rules Crim.Proc. rules 8(b), 14, 18 U.S.C. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Motion to sever based on claim of irreconcilable defenses may be granted only if it can be shown that inherent irreconcilability results from clear and substantial contradiction between respective defenses, and further that the irreconcilability creates a danger or risk that jury will draw an improper conclusion from existence of conflicting defenses alone that both defendants are guilty. *McCoy v. United States*,

760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Severance may be required when defendants offer conflicting and irreconcilable defenses so that jury will unjustifiably infer that such conflict alone demonstrates that both are guilty. D.C. Code SCR, Criminal Rule 14; D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

Defendants, requesting severance, failed to show any irreconcilable conflict in defenses, unless of a de minimis degree. D.C. Code SCR, Criminal Rule 8(b); D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

Where prosecution of juvenile in juvenile court proceeded before judge without jury, court did not commit reversible error when it refused to grant juvenile separate trial after hearing witness testify that juvenile's corespondent had implicated him in corespondent's statements about burglary for which juvenile was being tried. D.C. Code §§ 22-501, 22-1801, 22-2901. *In re W.*, 370 A.2d 1333, 1977 D.C. App. LEXIS 430 (1977).

Even assuming that defendant and codefendant had antagonistic defenses to armed robbery charge, where independent evidence of defendant's guilt was overwhelming and defendant did not demonstrate that alleged conflict in defenses in itself created danger that jury would unjustifiably infer defendant's guilt, any possible prejudice which may have resulted from joint trial was not such as to warrant reversal. D.C. Code §§ 22-2901, 22-3202, 23-311, 23-313; D.C. Code SCR, Criminal Rule 14. *Clark v. United States*, 367 A.2d 158, 1976 D.C. App. LEXIS 438 (1976).

— Motions for severance, codefendants.

To enable court to deal effectively with problems arising from conflicting defenses, motions for severance should be tendered at time sufficiently early to allow reasonable opportunity

therefor. Fed. Rules Crim. Proc. rules 8(b), 14, 18 U.S.C. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

The Court of Appeals will reverse the trial court's decision regarding severance only upon a clear showing that it has abused its considerable discretion, and to demonstrate an abuse of discretion, a defendant must show not simply prejudice, but that he or she suffered manifest prejudice from the joinder of the cases. *Hammond v. United States*, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari denied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

— Prejudice, codefendants.

To win severance, codefendant must show that substantial prejudice derives from joint trial, and not merely that he would have had better chance of acquittal were he tried separately. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Fact that a defendant would have had better chance of acquittal had he been tried alone is not alone basis for holding that denial of severance constituted abuse of discretion. D.C. Code SCR, Criminal Rule 8(b); D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

Where assault and weapon charges against one defendant were joined for trial with murder charges against other defendants, particular defendant was prejudiced by association with evidence proving bloody and grotesque killing, and in view of reference throughout trial to defendants as group having name of particular defendant, associating particular defendant in minds of jurors with murder with which he was not charged, prejudice required reversal and there was thus abuse of discretion in denying severance. D.C. Code §§ 22-502, 22-2401, 22-3202, 22-3204, 23-311(c); D.C. Code SCR, Criminal Rule 8(b). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

— Presumptions, codefendants.

Generally, defendants charged with jointly

committing criminal offense are to be jointly tried. Fed.Rules Crim.Proc. rules 8(b), 14, 18 U.S.C. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Generally, when individuals have been charged together, there is a strong presumption that they should be tried together; a severance may be granted, however, if trying the individuals together prejudices any party. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

There is a strong presumption that defendants jointly charged with committing an offense will be tried together, but defendant may rebut that presumption if a sufficient degree of prejudice can be shown. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

There is, traditionally, a presumption in favor of joinder, as joint trials conserve state funds, diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused of crime to trial. D.C. Code 1981, § 23-311; Criminal Rule 8. *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

By allowing trial court wide latitude in determining whether to grant or deny motion for severance, Court of Appeals accords strong presumption that two defendants when charged with jointly committing criminal offense will be jointly tried. D.C. Code 1981, § 23-311. *Jackson v. United States*, 650 A.2d 659, 1994 D.C. App. LEXIS 218 (1994).

When defendants are charged with jointly committing crime, strong presumption exists that they will be tried together. *Russell v. United States*, 586 A.2d 695, 1991 D.C. App. LEXIS 21 (1991).

— Reciprocal admissibility, codefendants.

In view of fact that evidence implicating particular defendant would have been admissible at separate trial to prove motive, intent, premeditation and deliberation, denial of his motion to sever did not constitute abuse of discretion. D.C. Code SCR, Criminal Rule 8(b); D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316

(1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

— Series of acts, codefendants.

Joinder in indictment of counts charging both defendants with assault with a dangerous weapon and charging each defendant respectively with possession of a pistol without a license was proper, since each count was directed to a different facet of one continuous occurrence, and thus constituted a "series of acts" within meaning of rule governing joinder of offenses. D.C. Code SCR, Criminal Rule 8(a). *Barker v. United States*, 373 A.2d 1215, 1977 D.C. App. LEXIS 326 (1977).

— Stipulations, codefendants.

No defendant can demand as of right a stipulation by his codefendant. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Construction and application.

Rule permitting joinder of offenses in the same indictment is construed broadly in favor of initial joinder. *Sweet v. United States*, 756 A.2d 366, 2000 D.C. App. LEXIS 118 (2000).

Court must strictly monitor joint trials due to presumptive possibility of prejudice to defendant, but joinder will be upheld where offenses are committed as means to specific common end or where offenses are directed toward some shared goal, where one offense logically leads to another and where offenses are part of common scheme or plan, involving same place, short period of time, and similar modus operandi. D.C. Code SCR, Criminal Rule 8(b); D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

In considering case involving rule which authorizes joinder of two or more defendants in one indictment for trial, and which is identical to federal rule Court of Appeals would be guided in its decision by cases interpreting the federal rule. D.C. Code SCR, Criminal Rule 8(b); Fed.Rules Crim.Proc. rule 8(b), 18 U.S.C.; D.C. Code § 23-311(c). *Davis v. United States*, 367 A.2d 1254, 1976 D.C. App. LEXIS 448 (1976), writ of certiorari denied by 434 U.S. 847, 98 S. Ct. 154, 54 L. Ed. 2d 114, 1977 U.S. LEXIS 3112 (1977).

Joined offenses.

— Drug offenses, joined offenses.

Defendant's right to fair trial was not vio-

lated due to joinder of charge of failure to appear in court for enhanced drug treatment program (EDTP) review hearing with substantive charge of distribution of cocaine, and thus defendant was not entitled to mistrial, despite claim that defendant suffered prejudice by having to introduce evidence of his drug use to combat consciousness of guilt instruction for which government ultimately failed to adduce sufficient evidence to support; trial court's limiting instruction adequately informed jury as to evidence that could be used to determine defendant's guilt on drug distribution charge. D.C. Code 1981, §§ 23-311(a), 23-312, 23-1327(a), 33-541(a)(1); Criminal Rules 8(a), 13. *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

Joinder of charge of failure to appear in court for enhanced drug treatment program (EDTP) review hearing with charge of distribution of cocaine was permissible; charges were related in time, defendant's custody stemmed from substantive drug charge, and inference was permissible that defendant's failure to appear at EDTP court date was motivated by avoidance of prosecution for drug offense. D.C. Code 1981, §§ 23-311(a), 23-312, 23-1327(a), 33-541(a)(1); Criminal Rules 8(a), 13. *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

Counts charging defendant with distribution of prelude and distribution of heroin involved crimes of similar character, and thus could properly be joined. Criminal Rule 8(a); D.C. Code 1981, § 23-311(a). *Thorne v. United States*, 582 A.2d 964, 1990 D.C. App. LEXIS 280 (1990).

— Duplicity of joined offenses.

An indictment is "duplicious" if two otherwise joinable offenses are actually contained in a single count of the indictment. *Barker v. United States*, 373 A.2d 1215, 1977 D.C. App. LEXIS 326 (1977).

Although voluntary and involuntary manslaughter are separate offenses which must be charged in separate counts if Government desires to charge both, original duplicious nature of indictment, charging motorist with manslaughter in connection with death of two persons as result of automobile accident, which duplicity arose from fact that indictment failed to distinguish between voluntary and involuntary manslaughter, was corrected when Government elected to proceed solely upon theory of involuntary manslaughter, which election was appropriate remedy for such duplicious indictment, and thus, indictment was not fatally defective. *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

After Government's election to proceed only on theory of involuntary manslaughter under duplicious indictment which failed to distin-

guish between voluntary and involuntary manslaughter, trial suffered none of infirmities associated with one based upon duplicious indictment, in that Government adduced no proof inconsistent with charge of involuntary manslaughter, motions for judgments of acquittal were addressed solely to that charge and to charge of negligent homicide, lesser included offense, and jury was instructed only on involuntary manslaughter; furthermore, jury acquitted motorist on charge of manslaughter as to both victims, which abrogated any question as to which crime indictment referred. D.C. Code § 40-606. *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

— Homicides, joined offenses.

Offenses related to defendant's alleged murder of two victims were properly joined in same indictment, in that circumstances demonstrated that the offenses were connected because of overlapping proof, where there was evidence that the same gun used in shooting one victim was used in the assault on other victim, who was later killed by the same man who had shot her once before. *Sweet v. United States*, 756 A.2d 366, 2000 D.C. App. LEXIS 118 (2000).

Under circumstances including, inter alia, that crimes occurred almost six months apart, were distant in location and no motive was shown for either homicide, joint trial, under indictment charging two counts of second-degree murder, was erroneous, since asserted factors of commonality left question of identity to speculation and probative value of factors did not outweigh prejudice, where there was no concurrence of unusual or distinctive facts relating to manner in which crimes were committed as would justify a rational conclusion that defendant, to exclusion of others, was killer and potential misuse of evidence by jury was apparent. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

— In general.

The Government is permitted to charge lesser included or alternative offenses in order to allow for contingencies in proof. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

When an act violates more than one criminal statute, government may prosecute under either so long as it does not discriminate against any class of defendants. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

When an act violates two criminal statutes, the courts are obliged to permit enforcement of both statutes in the absence of an express statement of congressional intent. *Newby v.*

United States, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Defendant may move to sever joined counts if he establishes that joinder presents most compelling prejudice when balanced against strong social policy to conserve state funds, limit inconvenience, and avoid delay. D.C. Code 1981, § 23-311(a); Criminal Rules 8(a), 14. *Wheeler v. United States*, 470 A.2d 761, 1983 D.C. App. LEXIS 547 (1983).

Joined offenses need not be identical in every detail. D.C. Code 1973, § 23-311(a); Criminal Rule 8(a). *Brooks v. United States*, 448 A.2d 253, 1982 D.C. App. LEXIS 393 (1982).

Inflammatory nature of offenses, coupled with the court's inability to assess before trial whether intent would be a "material or genuine" issue, necessitated severance of the first two counts from the remaining counts of the indictment. *United States v. Peoples*, 116 WLR 1161 (Super. Ct. 1988).

— Motions for severance, joined offenses.

When a pretrial motion claims misjoinder of offenses, the court ordinarily determines the motion on the basis of the indictment alone. D.C. Code 1981, § 23-311(a); Criminal Rule 8(a). *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

Court has continuing obligation to monitor for prejudice and to sever offenses for trial where necessary to avoid prejudice, but grant or denial of motion for severance will be reversed only on showing of abuse of discretion. D.C. Code SCR, Criminal Rule 8(b); D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

— Multiple sovereignties, joined offenses.

Passage of Bank Robbery Act did not limit prosecutorial discretion to prosecute under District of Columbia Code for felony-murder occurring in federally insured financial institution. D.C. Code § 24-301(j); 18 U.S.C. § 2113. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Prosecution of a defendant under both the federal bank (savings and loan) robbery statute and the local armed robbery statute of the District of Columbia is not a denial of equal protection; a defendant is subject to only a single trial in the District and there are no possible adverse consequences due to being found guilty under both federal and District of Columbia law, since he can ultimately be sentenced under only one statutory scheme. 18

U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

Double jeopardy clause of the Fifth Amendment will bar separate prosecutions under the federal and District of Columbia statutes for the same offense, i.e., where the offenses are identical or where one offense is a lesser included offense of the other. U.S. Const. Amend. 5. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

Double jeopardy clause prohibits successive prosecutions in the District of Columbia for violations of federal and District of Columbia law arising from the same bank or savings and loan robbery, but it does not require that prosecution under the federal scheme be preferred to prosecution under local statutes, so long as only a single prosecution takes place. 18 U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

It is not a denial of due process for the Government to choose to prosecute under a federal statute which imposes a greater penalty than an identical District of Columbia statute; and this reasoning applies with equal force to the situation where the local statute provides greater penalties than the federal statute. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

In the absence of any contrary expression of congressional intent, it cannot be implied that Congress chose to allow dual prosecutions of bank or savings and loan robberies throughout the rest of the United States but prohibited the Government from ever electing to prosecute under local rather than federal law when the bank or savings and loan association is located in the District of Columbia. 18 U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

Where federal and District of Columbia offenses have been properly joined in one indictment and jeopardy has attached, the district court may proceed to a determination of the local offenses regardless of any intervening disposition of the federal counts. D.C. Code §§ 11-501 et seq., 11-502(3). *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

Whether the passage of a specific law precludes prosecution under a more general law governing the same offense is a question of legislative intent. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

The federal savings and loan robbery statute does not preclude a prosecution under District of Columbia law for the robbery of an institution falling within the jurisdiction of the federal statute. 18 U.S.C. §§ 2113(a), 3231; D.C. Code

§§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

The Government may properly charge in the same indictment offenses against both the federal bank (savings and loan) robbery statute and the District of Columbia armed robbery statute, provided defendant is not ultimately sentenced under two statutes proscribing essentially the same offense. 18 U.S.C. § 2113(a); D.C. Code §§ 22-2901, 22-3202. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

The Government is not as a general principle prevented from simultaneously charging in one indictment offenses under similar federal and District of Columbia statutes arising out of a single transaction. *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

Individual acts of defendant and co-defendants did not coalesce into a single continuing offense for Double Jeopardy purposes even though all acts were part of one "gang rape"; each count against defendant charged him with a different act of rape or sodomy that was committed by a different principal perpetrator, either defendant himself or one of his co-defendants, whom defendant aided and abetted. *Brown v. United States*, 795 A.2d 56, 2002 D.C. App. LEXIS 74 (2002).

There is no double jeopardy bar to separate and cumulative punishment for separate criminal acts, even if those separate acts do happen to violate the same criminal statute. *Brown v. United States*, 795 A.2d 56, 2002 D.C. App. LEXIS 74 (2002).

— Prejudice, joined offenses.

In deciding whether to sever trials, the trial judge must balance the possibility of prejudice to the defendants against the legitimate probative force of the evidence and the interest in judicial economy. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

A motion for severance of offenses on the ground of prejudicial joinder is committed to the sound discretion of the trial court. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

In assessing a request for severance, the trial court should weigh the potential prejudice against the considerations of judicial economy and expeditious proceedings. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

To show an abuse of discretion in denying request for severance, the appellant must show

not only prejudice, but manifest prejudice. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

A motion for severance of criminal counts contained within one indictment may be granted in discretion of court upon showing of undue prejudice, even if offenses are properly joined. D.C. Code SCR, Criminal Rule 14. *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

In order to establish that trial judge abused his discretion in denying defendant a severance of criminal offenses contained within a single indictment, a defendant must show the most compelling prejudice from which the court would be unable to afford protection if both offenses were tried together. D.C. Code SCR, Criminal Rule 8(a). *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

In order to establish that trial judge had abused his discretion in denying defendant severance of criminal offenses contained within single indictment, it is not sufficient to show that defendant would have better chance of acquittal if charges were tried separately. D.C. Code SCR, Criminal Rule 8(a). *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

When offenses of "similar character" are joined at trial there is substantial risk of prejudice. D.C. Code §§ 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Evans v. United States*, 392 A.2d 1015, 1978 D.C. App. LEXIS 327 (1978).

Question on review, in regard to propriety of trying offenses together over defendant's timely and specific objection, is whether trial record manifests a sufficient possibility of undue prejudice by reason of the joinder to indicate an abuse of discretion. D.C. Code § 23-311(a); D.C. Code SCR, Criminal Rules 8(a), 14. *Hackney v. United States*, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

Generally, if evidence of joined offenses would be mutually admissible in separate trial of those offenses, severance is not required on account of "criminal propensity" prejudice. D.C. Code § 23-311(a); D.C. Code SCR, Criminal Rules 8(a), 14. *Hackney v. United States*, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

The appropriateness of joinder in evidence-of-other-crimes cases must be determined by balancing inevitable prejudice to the defendant caused by the joinder against the legitimate probative force of the evidence and expedition in judicial administration. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-

311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

Whenever similar but unrelated offenses are charged in indictment to single defendant, there is possibility of some prejudice but, without more, such joinder is permissive. D.C. Code § 23-311(a); D.C. Code SCR, Criminal Rules 8(a), 14. *Arnold v. United States*, 358 A.2d 335, 1976 D.C. App. LEXIS 534 (1976).

The decision whether to order separate trial on ground that joinder of offenses is prejudicial is within the sound discretion of the trial court and is not subject to reversal absent manifest abuse of that discretion. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code § 23-311. *Roldan v. United States*, 353 A.2d 292, 1976 D.C. App. LEXIS 484 (1976).

Offenses may be joined in a single indictment if they are similar in character or constitute part of a common scheme or plan, but if and when such joinder is shown to be prejudicial the court may, by way of relief, order that separate trials be had. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code § 23-311. *Roldan v. United States*, 353 A.2d 292, 1976 D.C. App. LEXIS 484 (1976).

— Reciprocal admissibility, joined offenses.

The doctrine of mutual admissibility recognizes that the joinder for trial of two crimes does not unduly increase the likelihood that the jury will infer a criminal disposition when the rules of evidence would have permitted the admission of evidence of each crime at the separate trial of the other. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

Denial of defendant's motion for severance of Bail Reform Act charge, which was based on defendant's failure to appear on scheduled trial date, from underlying murder charge was not abuse of discretion, since evidence of defendant's failure to appear for trial would have been admissible, in any event, at separate trial for murder. *Russell v. United States*, 586 A.2d 695, 1991 D.C. App. LEXIS 21 (1991).

Refusal to sever joined burglary counts was not plain error, as evidence concerning first incident would have been admissible in separate trial of offenses committed at second house. D.C. Code 1981, § 23-311(a); Criminal Rules 8(a), 14. *Wheeler v. United States*, 470 A.2d 761, 1983 D.C. App. LEXIS 547 (1983).

Propriety of initial joinder of criminal counts under Rule permitting initial joinder in single indictment of offenses which are of the same or similar character does not depend on reciprocal admissibility as determined by evidence but on general similarity between offenses as alleged in indictment. D.C. Code SCR, Criminal Rule

8(a). *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

Where evidence of two crimes charged in single indictment is reciprocally admissible, severance of crimes will be denied. D.C. Code SCR, Criminal Rule 14. *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

Generally, joinder of counts presents no prejudice to defendant if evidence of crimes charged would be admissible in separate trial for other offense. D.C. Code SCR, Criminal Rule 8(a); D.C. Code § 23-311(a). *Bittle v. United States*, 410 A.2d 1383, 1980 D.C. App. LEXIS 236 (1980).

In proceeding in which defendant was convicted of two counts of first-degree murder, refusal to sever the three homicide counts against defendant and to order separate trials on each charge was not abuse of discretion, in light of fact that existence of a cover-up scheme would have rendered evidence of all the charges against defendant mutually admissible at the separate trials if severance motion had been granted and in view of indication that the degree of any prejudice to defendant was outweighed by considerations of economy and expedited judicial administration. D.C. Code §§ 22-2401, 23-311(a); D.C. Code SCR, Criminal Rules 8(a), 14. *Hackney v. United States*, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

Test of mutual admissibility of offenses does not require that a single characteristic be so unique as to lead to conclusion that all were committed by the same person. D.C. Code §§ 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Bridges v. United States*, 381 A.2d 1073, 1977 D.C. App. LEXIS 304 (1977), writ of certiorari denied by 439 U.S. 842, 99 S. Ct. 135, 58 L. Ed. 2d 141, 1978 U.S. LEXIS 2828 (1978).

If joinder of offenses is based on fact that crimes are of a "similar character," a motion to sever should be granted unless evidence as to each offense is separate and distinct or the evidence of each of the joint crimes would be admissible at the separate trial of the other. D.C. Code §§ 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Bridges v. United States*, 381 A.2d 1073, 1977 D.C. App. LEXIS 304 (1977), writ of certiorari denied by 439 U.S. 842, 99 S. Ct. 135, 58 L. Ed. 2d 141, 1978 U.S. LEXIS 2828 (1978).

— Robberies, joined offenses.

Joinder of charges arising from three separate armed robberies was proper where evidence for each of the crimes was relevant to establish common scheme and plan and went to issue of identity, evidence as to each crime was

clearly separable and distinct and not likely to cause confusion, and there was no showing that any prejudice resulted from refusing to grant severance. Fed. Rules Crim. Proc. rules 8(a), 14, 18 U.S.C. *United States v. Miller*, 449 F.2d 974, 1970 U.S. App. LEXIS 10206 (C.A.D.C. 1970).

Joinder of two armed robberies which were committed ten days apart and involved restaurant and its manager was proper. D.C. Code 1981, § 23-311(a); Criminal Rule 8(a). *Fields v. United States*, 484 A.2d 570, 1984 D.C. App. LEXIS 543 (1984), writ of certiorari denied by 471 U.S. 1067, 105 S. Ct. 2144, 85 L. Ed. 2d 501, 1985 U.S. LEXIS 1693, 53 U.S.L.W. 3777 (1985).

The two armed robberies with which defendant was charged and which were closely related in time and place were of the same or similar character within meaning of rule permitting initial joinder in single indictment of offenses which are of same or similar character and were therefore properly joined. D.C. Code § 22-2901; D.C. Code SCR, Criminal Rule 8(a). *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

Where robbery and felony-murder, although unrelated as to place, were so closely related in time as to almost constitute continuing transaction and evidence of robbery would have been admissible in separate trial for felony-murder to show motive, intent, absence of accident and common scheme or plan to rob, trial court did not abuse its discretion in denying severance of robbery and felony-murder counts. D.C. Code §§ 22-2401, 22-2901, 22-3204; D.C. Code SCR, Criminal Rule 14. *Calhoun v. United States*, 369 A.2d 605, 1977 D.C. App. LEXIS 421 (1977).

— Sexual assaults, joined offenses.

When joinder is based on the similar character of the offenses, a motion to sever trials should be granted unless (1) the evidence as to each offense is separate and distinct, and thus unlikely to be amalgamated in the jury's mind into a single inculpatory mass, or (2) the evidence of each of the joined crimes would be admissible at the separate trial of the others. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

Trial court acted within its discretion in refusing to sever trials for sexual abuse occurring on two different dates and involving two different victims; similarities existed between offenses, in that same vehicle was used, defendant made friendly approach to victims followed by use of force both times, defendant and his companion in crime were identified as present at both incidents, and, based on circumstantial evidence, same pistol was displayed on both occasions, and defendant's in-

tent to have sexual contact was relevant to issue of consent. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

In prosecution for two separate rapes, trial court did not abuse its discretion in denying defendant's motion to sever where similarities in two rapes made conclusion that they were committed by same person almost inescapable and where evidence of each rape would have been mutually admissible at separate trials on issue of identity of rapist. D.C. Code 1973, § 23-311(a); Criminal Rules 8(a), 14. *Brooks v. United States*, 448 A.2d 253, 1982 D.C. App. LEXIS 393 (1982).

Denial of motion to sever counts of indictment in proceeding in which accused was convicted of four rape offenses and other offenses was not abuse of discretion, in view of similar characteristics of such offenses, in which assailant entered through rear of apartments, awoke victims, threatened them with weapon, demanded silence and submission and committed no act of violence if there was compliance with his orders, in which, in three of the cases, he sought to prevent victims from getting good look at him and cut or threatened to cut phone lines and in which he cut off any pants worn by victims. D.C. Code §§ 22-502, 22-1801(a), 22-2801, 22-3202, 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Bridges v. United States*, 381 A.2d 1073, 1977 D.C. App. LEXIS 304 (1977), writ of certiorari denied by 439 U.S. 842, 99 S. Ct. 135, 58 L. Ed. 2d 141, 1978 U.S. LEXIS 2828 (1978).

Trial court in prosecution of defendant for two rapes did not abuse its discretion in denying severance of one rape count from another where, while two rapes occurred at different times, method employed by rapist in each case was strikingly similar. D.C. Code §§ 22-2801, 23-311(a); D.C. Code SCR, Criminal Rules 8(a), 14. *Arnold v. United States*, 358 A.2d 335, 1976 D.C. App. LEXIS 534 (1976).

— Simple and distinct proof, joined offenses.

Crimes do not merge if they are perpetrated against different victims. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

In cases not involving reciprocal admissibility of evidence, joinder may be permitted if the offenses involved are fairly separable by simple and distinct proof. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

Essence of "simple and distinct" test, as basis for joinder of offenses for trial, is that evidence be such that jury is unlikely to be confused by it

or misuse it. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

— Sufficiency of evidence, joined offenses.

When defendant charged with multiple offenses seeks severance respecting offense on ground that defendant wishes to testify respecting some, but not all, offenses, no need for severance exists until defendant makes convincing showing that he has important testimony to give on one count and strong need to refrain from testifying on other; in making showing, it is essential that defendant present enough information, regarding nature of his testimony on one count and his reasons for not wishing to testify on the other, to satisfy court that claim of prejudice is genuine and to enable it intelligently to weigh considerations of economy and expedition in judicial administration against defendant's interest in having free choice as to testifying. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

Two crimes are connected together within the meaning of the rule allowing joinder of offenses in the same indictment if proof of one crime constitutes a substantial portion of proof of the other. *Sweet v. United States*, 756 A.2d 366, 2000 D.C. App. LEXIS 118 (2000).

In joint trial, proof of one charge cannot be made to carry the other. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

— Testimony by defendant, joined offenses.

Defendant, who was convicted of possession of dangerous weapon and four counts of first-degree murder, failed to establish abuse of discretion in denial of his motion to sever counts of indictment involving a murder, which was only homicide that defendant wished to testify about, from counts charging him with the other murders, in that defendant, by merely stating that "[I]t is very possible that the defendant will wish to take the stand with respect to one charge and not the others," had not presented sufficient information as to nature of testimony he wished to give on one count and his reasons for not testifying on other counts. D.C. Code §§ 22-2401, 22-3204, 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Strickland v. United States*, 389 A.2d 1325, 1978 D.C. App. LEXIS 478 (1978), writ of certiorari denied by 440 U.S. 926, 99 S. Ct. 1258, 59 L. Ed. 2d 481, 1979 U.S. LEXIS 927 (1979).

Trial court did not abuse its discretion in refusing to require a separate trial of two offenses in light of facts that the offenses were

similar in character, that evidence of the two crimes was simple and distinct and that the jury was clearly instructed as to each, despite defendant's contention that but for the joinder defendant would have taken the stand to testify as to how he had come by the stolen property relevant to one offense. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code § 23-311. *Roldan v. United States*, 353 A.2d 292, 1976 D.C. App. LEXIS 484 (1976).

Presumptions, generally.

In determining whether severance of trials was required, appellate court begins with a presumption favoring joinder of trials. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

Where individuals are charged jointly with committing crimes, there is a strong presumption that the offenses should be tried together. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

There is a presumption favoring joinder of trials. D.C. Code SCR, Criminal Rule 8(a); D.C. Code § 23-311(a). *Bittle v. United States*, 410 A.2d 1383, 1980 D.C. App. LEXIS 236 (1980).

Strong policy favors joinder in that it expedites administration of justice, reduces congestion of trial dockets, conserves judicial time, lessens burden upon citizens who must sacrifice both time and money to serve upon juries, and avoid necessity of recalling witnesses who would otherwise be called upon to testify only once. D.C. Code SCR, Criminal Rule 8(b); D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

Review.

— In general.

A denial of severance will only be overturned for an abuse of discretion. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Order denying severance of trials for defendants jointly charged with committing offense will not be disturbed absent abuse of discretion. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243,

2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Finding of abuse of discretion in denial of severance of trials for defendants jointly charged with committing offense requires a determination that joint trial did in fact result in a defendant being denied a fair trial and due process of law. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Misjoinder under rule on joinder of offenses and defendants is an error of law, and thus, appellate court subjects trial court's joinder decision to de novo review. D.C. Code 1981, § 23-311; Criminal Rule 8. *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

An order denying severance of criminal offenses contained within one indictment may be reversed only upon clear showing of abuse of discretion. D.C. Code SCR, Criminal Rule 14. *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

Where defendants made timely and specific objections to joint trial, question for review was whether trial record manifested sufficient possibility of undue prejudice by reason of such joinder to indicate abuse of discretion by trial

judge. D.C. Code SCR, Criminal Rule 8(b); D.C. Code § 23-311(c). *Sousa v. United States*, 400 A.2d 1036, 1979 D.C. App. LEXIS 316 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408, 1979 U.S. LEXIS 3979 (1979), writ of certiorari denied by 444 U.S. 981, 100 S. Ct. 485, 62 L. Ed. 2d 408 (1979).

— **Preservation of issues for review.**

Defendant's argument that introduction of evidence that co-defendant had previously been seen with gun was prejudicial to defendant was not raised as grounds for severing murder trial, nor did defendant object to admissibility of gun evidence on that ground during trial, and thus argument would be reviewed for plain error on appeal. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Trial court's failure to grant defendant's pre-trial motion for severance of charges of distribution of preludin and distribution of heroin was not reversible error; evidence did not indicate that pendency of motion to sever was ever brought to judge's attention, defendant's counsel did not renew the motion, and thus the judge could not reasonably have been expected to sever the count sua sponte, prosecutor presented evidence of two offenses separately and distinctly, and trial judge properly instructed jury that each count should be considered separately. Criminal Rule 8(a); D.C. Code 1981, § 23-311(a). *Thorne v. United States*, 582 A.2d 964, 1990 D.C. App. LEXIS 280 (1990).

Court of Appeals could, at most, review defendant's claim that charges arising from two robberies were improperly joined for plain error where defendant made no objection to the joinder in the trial court. D.C. Code 1981, § 23-311(a); Criminal Rule 8(a). *Fields v. United States*, 484 A.2d 570, 1984 D.C. App. LEXIS 543 (1984), writ of certiorari denied by 471 U.S. 1067, 105 S. Ct. 2144, 85 L. Ed. 2d 501, 1985 U.S. LEXIS 1693, 53 U.S.L.W. 3777 (1985).

§ 23-312. Joinder of indictments or informations for trial.

The court may order two or more indictments or informations, or both, to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

(July 29, 1970, 84 Stat. 611, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-312.

1973 Ed., § 23-312.

CASE NOTES

ANALYSIS

Review.

—In general.

—Preservation of grounds for review.

Review.

— In general.

Where defendant himself moved for joinder of indictments, where defendant did not object to admission of evidence of other crimes at trial for strategic reasons in order to prove defense of insanity, where much of evidence of other crimes would have been introduced regardless of joinder, and where possibility of prejudice was not enlarged by factor of joinder alone, trial court's failure to order a severance, sua sponte, was not plain error requiring reversal. D.C. Code SCR, Criminal Rule 14. *Bell v. United States*, 332 A.2d 351, 1975 D.C. App. LEXIS 318 (1975).

Prejudice resulting from joinder of indictments must be considered in the light of what actually occurred after consolidated trials went forward, not merely in terms of what might have been a proper course when motion for joinder was made. D.C. Code SCR, Criminal Rule 14. *Bell v. United States*, 332 A.2d 351, 1975 D.C. App. LEXIS 318 (1975).

— Preservation of grounds for review.

Defendant cannot claim prejudice from join-

der of indictments where defendant himself moves for joinder and does not object to admission of evidence of other crimes at trial for strategic reasons in order to prove defense of insanity. D.C. Code SCR, Criminal Rule 14. *Bell v. United States*, 332 A.2d 351, 1975 D.C. App. LEXIS 318 (1975).

Generally, where offenses in an indictment are misjoined and accused does not timely object, objection is lost on appeal. *Bell v. United States*, 332 A.2d 351, 1975 D.C. App. LEXIS 318 (1975).

If court orders two or more indictments to be tried together and it later appears that joinder is inappropriate, there must be timely objection so that court may fashion suitable remedy, such as severance. D.C. Code SCR, Criminal Rules 13, 14. *Bell v. United States*, 332 A.2d 351, 1975 D.C. App. LEXIS 318 (1975).

Where defendant himself initiated joinder of indictments and there was no objection in any stage of proceedings to joint trial, defendant could not assert on appeal the issue of prejudicial misjoinder absent finding that trial judge should at some point have sua sponte ordered a severance. D.C. Code SCR, Criminal Rules 13, 14. *Bell v. United States*, 332 A.2d 351, 1975 D.C. App. LEXIS 318 (1975).

§ 23-313. Relief from prejudicial joinder.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

(July 29, 1970, 84 Stat. 611, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-313.

1973 Ed., § 23-313.

CASE NOTES

ANALYSIS

Burden of proof.

Codefendants.

—Firearms violations, codefendants.

—In general.

—Irreconcilable defenses, codefendants.

—Motions for severance, codefendants.

—Prejudice, codefendants.

—Robberies, codefendants.

Joined offenses.

—Burglaries, joined offenses.

—Homicides, joined offenses.

—In general.

—Motions for severance, joined offenses.

—Prejudice, joined offenses.

- Reciprocal admissibility, joined offenses.
- Robberies, joined offenses.
- Sexual assaults, joined offenses.
- Simple and distinct proof, joined offenses.
- Sufficiency of evidence, joined offenses.
- Testimony by defendant, joined offenses.
- Presumptions.
- Review.

Burden of proof.

A conclusory assertion on the part of the movant that severance of defendants is necessary to enable him to present the exculpatory testimony of a co-defendant is insufficient for severance. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Defendant seeking to have his trial severed from that of co-defendant must identify not only a specific right jeopardized by a joint trial, but also the particular facts of the case that give rise to the risk of prejudice, and when the risk of prejudice is high, a trial court is more likely to determine that separate trials are necessary. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Codefendants.

— Firearms violations, codefendants.

In prosecution which resulted in conviction of carrying a pistol without a license, trial court did not abuse its discretion in denying defendant's motion to sever his trial from that of his codefendant on ground that jury might infer his guilt from facts and circumstances relating to other weapons found in codefendant's trunk. D.C. Code 1981, §§ 22-3204, 23-313. *Brown v. United States*, 546 A.2d 390, 1988 D.C. App. LEXIS 135 (1988).

— In general.

A defendant's request for a certain order or sequence of severed trials, in order both to exercise his due process right to present witnesses in defense and to accommodate a co-defendant's Fifth Amendment privilege against self-incrimination, does not necessarily constitute evidence that severance rule was invoked solely for the purpose of manipulating the order of trial. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Trial courts should not, in all cases, reject an offer of a co-defendant witness to provide exculpatory testimony conditioned on a separate trial prior to that of defendant. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Trial court, in exercising its discretion to sever codefendants, must weigh prejudice to defendant caused by joinder against obviously important considerations of economy and expedition in judicial administration. D.C. Code

1981, § 23-313. *Brown v. United States*, 546 A.2d 390, 1988 D.C. App. LEXIS 135 (1988).

— Irreconcilable defenses, codefendants.

Motion to sever based on claim of irreconcilable defenses may be granted only if it can be shown that inherent irreconcilability results from clear and substantial contradiction between respective defenses, and further that the irreconcilability creates a danger or risk that jury will draw an improper conclusion from existence of conflicting defenses alone that both defendants are guilty. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Even assuming that defendant and codefendant had antagonistic defenses to armed robbery charge, where independent evidence of defendant's guilt was overwhelming and defendant did not demonstrate that alleged conflict in defenses in itself created danger that jury would unjustifiably infer defendant's guilt, any possible prejudice which may have resulted from joint trial was not such as to warrant reversal. D.C. Code §§ 22-2901, 22-3202, 23-311, 23-313; D.C. Code SCR, Criminal Rule 14. *Clark v. United States*, 367 A.2d 158, 1976 D.C. App. LEXIS 438 (1976).

— Motions for severance, codefendants.

In considering a defendant's motion to sever in order to present a co-defendant's testimony, the judge must determine whether the proposed testimony is sufficiently important to the defense—marked by its substantially exculpatory nature and essential role in the defense theory of the case—that the trial judge should consider sequencing the trial in such a way to make it possible. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Where defendant has vigilantly moved for severance in order to secure a co-defendant's genuinely exculpatory testimony, the consequential request to sequence the trials to safeguard the Fifth Amendment privilege of the witness is likely to be the norm and should not, on its own, automatically lead to denial of the severance motion on the ground that the co-defendant is not reasonably likely to testify. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

A trial court may take into account the conditional nature of a co-defendant's offer to testify against granting a motion for severance of defendants. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Ordinarily, if appellate court determined that trial court did not fully consider all relevant factors for severance of defendants, appellate court would remand for further consideration of severance motion, but remand was not warranted where, on the record, trial court had but one option, namely to grant severance motion; co-defendant's proffered testimony that he did not see defendant with gun had powerful exculpatory potential because it suggested that defendant was never in possession of gun found in car, and if credited, it directly contradicted a fact necessary to prove weapons offense, and both counsel apprised court of problem posed by co-defendant's Fifth Amendment privilege and proposed solution significantly supported conclusion that co-defendant's testimony was reasonably likely to be forthcoming. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

The mere fact that two co-defendants' defenses are separate, distinct and antagonistic and that each may have a better chance at acquittal if tried separately is not sufficient for a grant of severance. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

Generally, when individuals have been charged together, there is a strong presumption that they should be tried together; a severance may be granted, however, if trying the individuals together prejudices any party. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

In deciding whether to sever, trial judge must balance possibility of prejudice to defendants against legitimate probative force of evidence and interest in judicial economy. D.C. Code SCR, Criminal Rule 14; D.C. Code § 23-313. *Bittle v. United States*, 410 A.2d 1383, 1980 D.C. App. LEXIS 236 (1980).

— Prejudice, codefendants.

Defendant was prejudicially denied a fair trial and due process of law as result of trial court's decision not to sever defendant's trial from that of co-defendant; co-defendant's proffered testimony that he did not see defendant with gun had powerful exculpatory potential because it suggested that defendant was never in possession of gun found in car, and if credited, it directly contradicted a fact necessary to prove weapons offense, and both counsel apprised trial court of problem posed by co-defendant's Fifth Amendment privilege and proposed solution significantly supported conclusion that

co-defendant's testimony was reasonably likely to be forthcoming. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Defendant failed to show that manifest prejudice resulted due to denial of his motion to sever, in prosecution for second-degree murder and other offenses; defendant was able to put on case of self defense, refusal to admit witness' testimony that she had seen co-defendant with guns on two prior occasions did not prejudice defendant, as witness provided unchallenged testimony that she had seen co-defendant shortly after hearing gunshots on morning of offenses at issue, and that she had seen co-defendant almost daily for a couple of years, thus leaving little room for question regarding her identification, and discussion about whether co-defendant could cross-examine witness about his drug dealing activities, which included defendant, took place outside presence of jury. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

Policy concerns have long favored joint trials; thus, the more rigorous requirement of manifest prejudice must be established by defendants in order for them to be entitled to severance. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

Required showing of prejudice for defendants to be entitled to severance may not be established per se because two defendants blame one another for the offense charged; rather, defendants must demonstrate that there is a danger or risk that the jury will draw an improper conclusion from the existence of the conflicting defenses alone that both defendants are guilty. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

In assessing a request for severance, the trial court should weigh the potential prejudice against the considerations of judicial economy and expeditious proceedings. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

To show an abuse of discretion in denying request for severance, the appellant must show not only prejudice, but manifest prejudice. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Motion to sever for prejudicial joinder is properly denied where excision of the prejudicial portions of the codefendant's extrajudicial statement is a feasible alternative. *Carpenter v.*

United States, 430 A.2d 496, 1981 D.C. App. LEXIS 267 (1981), writ of certiorari denied by 454 U.S. 852, 102 S. Ct. 295, 70 L. Ed. 2d 143, 1981 U.S. LEXIS 3520, 50 U.S.L.W. 3247 (1981).

Trial court did not abuse its discretion in failing to grant defendant's motion to sever after police officer testified, on rebuttal to codefendant's testimony, that codefendant confessed and implicated defendant in the robbery where record reflected an attempt, whether by court or Government, to redact police officer's testimony regarding codefendant's statement in order to eliminate any reference to defendant and where the redaction was feasible. D.C. Code SCR, Criminal Rule 14. *Carpenter v. United States*, 430 A.2d 496, 1981 D.C. App. LEXIS 267 (1981), writ of certiorari denied by 454 U.S. 852, 102 S. Ct. 295, 70 L. Ed. 2d 143, 1981 U.S. LEXIS 3520, 50 U.S.L.W. 3247 (1981).

Trial court in exercising its discretion to sever must weigh prejudice to defendant caused by joinder against the important considerations of economy and expedition of judicial administration, and in this balance, some amount of prejudice will be permitted in favor of judicial economy and the concomitant expedition of cases. D.C. Code SCR, Criminal Rule 14. *Carpenter v. United States*, 430 A.2d 496, 1981 D.C. App. LEXIS 267 (1981), writ of certiorari denied by 454 U.S. 852, 102 S. Ct. 295, 70 L. Ed. 2d 143, 1981 U.S. LEXIS 3520, 50 U.S.L.W. 3247 (1981).

— Robberies, codefendants.

Where there was no indication in record that evidence was presented in a confusing manner or that trial judge did not believe jury could separate evidence properly, and judge effectively took all precautions to avoid unfair prejudice to defendant resulting from admission in evidence, in joint trial of three defendants, of evidence of armed robbery with which he was not charged, trial judge correctly decided that interests of judicial economy outweighed potential prejudice to defendant and denial of severance was proper and not abuse of discretion. D.C. Code SCR, Criminal Rule 14; D.C. Code § 23-313. *Bittle v. United States*, 410 A.2d 1383, 1980 D.C. App. LEXIS 236 (1980).

In prosecution upon two robbery counts, admission of evidence of first robbery, although it was not probative of any element of Government's case against defendant in second robbery, was not an abuse of discretion where it was probative of codefendant's intent to commit second robbery, where defendant did not object to joint trial with codefendant, where there was no indication that evidence of the two crimes was confused in its presentation to jury and trial judge had no reason to suppose that jury could not keep separate what was relevant to

each, and where evidence of second robbery was probative of Government's charge that defendant committed first robbery, and trial judge did not abuse his discretion in denying severance of counts. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 22-2901, 22-3202. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

Joined offenses.

— Burglaries, joined offenses.

In view of possibility that jury misused evidence, factors common to two burglaries were not sufficiently unusual and distinctive to create reasonable probability that same person committed both offenses, and thus to make it proper to admit evidence of the one offense upon trial for the other, though each burglary involved nighttime entry of occupied dwelling place by two young Negro males who demanded money and expressed interest in drugs, each entry was facilitated by means of ruse which involved third person, victims were either threatened or physically assaulted and one intruder other than defendant in question was identified by nickname "Papa", and the offenses therefore should have been severed for trial for defendant in question. D.C. Code §§ 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Evans v. United States*, 392 A.2d 1015, 1978 D.C. App. LEXIS 327 (1978).

Evidence of second burglary was admissible on the issue of identity of the perpetrator of the first burglary where, inter alia, both offenses were similar in character. D.C. Code § 23-313. *Roldan v. United States*, 353 A.2d 292, 1976 D.C. App. LEXIS 484 (1976).

— Homicides, joined offenses.

Severance of defendants' murder trials from that of codefendant who apparently enlisted defendants in a plan to murder victim was not warranted, in light of effect of admission of codefendant's statements and letters and restrictions placed upon admission of evidence of another homicide in which codefendant might have been involved, and in light of fact that defendants' defenses were not otherwise irreconcilable. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Defendant was not entitled to severance of offenses related to alleged murder of two vic-

tims that were properly joined in same indictment; evidence would be admissible in separate trials, in that defendant admitted that he shot second victim because she had information about first victim's murder, and the same gun was used in both the murder of first victim and the subsequent initial shooting of second victim, which was direct proof of the offenses, and probative value of evidence was not outweighed by its prejudicial effect. *Sweet v. United States*, 756 A.2d 366, 2000 D.C. App. LEXIS 118 (2000).

Under circumstances including, *inter alia*, that crimes occurred almost six months apart, were distant in location and no motive was shown for either homicide, joint trial, under indictment charging two counts of second-degree murder, was erroneous, since asserted factors of commonality left question of identity to speculation and probative value of factors did not outweigh prejudice, where there was no concurrence of unusual or distinctive facts relating to manner in which crimes were committed as would justify a rational conclusion that defendant, to exclusion of others, was killer and potential misuse of evidence by jury was apparent. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

— In general.

"Common scheme or plan" theory of mutual admissibility was not ground for joinder of offenses involving adult complainant with offenses involving juvenile complainants. *McFerguson v. United States*, 870 A.2d 1199, 2005 D.C. App. LEXIS 142 (2005).

Consolidating charge that defendant had violated Bail Reform Act for trial with charges of unauthorized use of vehicle and of carrying pistol without license was not abuse of discretion, in light of fact that a "connection" between the charged acts was manifested, that evidence of the other charges would be admissible in a separate bail violation charge to show motive for flight and willfulness and that evidence of the bail violation would be admissible in a separate trial of the other charges to demonstrate consciousness of guilt. D.C. Code §§ 22-2204(a), 22-3204, 23-111(a), 23-313, 23-1327(a, b); D.C. Code SCR, Criminal Rules 8(a), 13, 14. *Grant v. United States*, 402 A.2d 405, 1979 D.C. App. LEXIS 366 (1979).

Evidence involving other crimes may be admitted to prove motive, intent, identity, existence of a common scheme or plan or the absence of inadvertence, accident or mistake. *Hackney v. United States*, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

— Motions for severance, joined offenses.

Among the specific trial rights that a motion for severance of defendants is intended to se-

cure is the right to present a defense and call witnesses on one's own behalf; this guarantee is a fundamental component of due process of law. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

When joinder is based on the similar character of the offenses, a motion to sever should be granted unless (1) the evidence as to each offense is separate and distinct, and thus unlikely to be amalgamated in the jury's mind into a single inculpatory mass, or (2) the evidence of each of the joined crimes would be admissible at the separate trial of the others. *McFerguson v. United States*, 870 A.2d 1199, 2005 D.C. App. LEXIS 142 (2005).

Severance of offenses charged in the same indictment should be granted unless: (1) the evidence as to each offense is separate and distinct, and thus unlikely to be amalgamated in the jury's mind into a single inculpatory mass, or (2) the evidence of each of the joined crimes would be admissible at the separate trial of the others. *Sweet v. United States*, 756 A.2d 366, 2000 D.C. App. LEXIS 118 (2000).

Since critical factor in determining merits of severance motion is prejudice to movant, trial court on retrial of defendant correctly considered anew the desirability of severance of rape charges. Criminal Rule 14. *Warren v. United States*, 436 A.2d 821, 1981 D.C. App. LEXIS 381 (1981).

Although a motion to sever is properly made pretrial, once a severance issue is presented the court has a continuing duty to take adequate measures to guard against unfair prejudice from joinder. *Carpenter v. United States*, 430 A.2d 496, 1981 D.C. App. LEXIS 267 (1981), writ of certiorari denied by 454 U.S. 852, 102 S. Ct. 295, 70 L. Ed. 2d 143, 1981 U.S. LEXIS 3520, 50 U.S.L.W. 3247 (1981).

Exercise of discretion to grant or refuse severance involves weighing prejudice to defendant caused by joinder against obviously important considerations of economy and expedition in judicial administration. D.C. Code SCR, Criminal Rules 8(a), 14. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

If joinder of offenses is based on fact that crimes are of a "similar character," a motion to sever should be granted unless evidence as to each offense is separate and distinct or the evidence of each of the joint crimes would be admissible at the separate trial of the other. D.C. Code §§ 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Bridges v. United States*, 381 A.2d 1073, 1977 D.C. App. LEXIS 304 (1977), writ of certiorari denied by 439 U.S. 842, 99 S. Ct. 135, 58 L. Ed. 2d 141, 1978 U.S. LEXIS 2828 (1978).

— Prejudice, joined offenses.

In order to assess the risk of prejudice from joint trial of defendants, the trial court must

take into account more than just the conditional nature of co-defendant's offer to testify, but, rather, the exculpatory nature and effect of the proposed testimony on the trial as a whole, and only then may the court determine the precise prejudice arising from the absence of the testimony when coming to a decision whether to sever the trials. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

When the risk of prejudice is high, a trial court is more likely to determine that separate trials are necessary for defendants. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

The risk of endangering a specific trial right by joint trial of defendants might occur if essential exculpatory evidence that would be available to a defendant tried alone is unavailable in a joint trial. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Motions for severance due to prejudicial joinder are committed to the trial court's sound discretion. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

A motion for severance of criminal counts contained within one indictment may be granted in discretion of court upon showing of undue prejudice, even if offenses are properly joined. D.C. Code SCR, Criminal Rule 14. *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

In order to establish that trial judge abused his discretion in denying defendant a severance of criminal offenses contained within a single indictment, a defendant must show the most compelling prejudice from which the court would be unable to afford protection if both offenses were tried together. D.C. Code SCR, Criminal Rule 8(a). *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

In order to establish that trial judge had abused his discretion in denying defendant severance of criminal offenses contained within single indictment, it is not sufficient to show that defendant would have better chance of acquittal if charges were tried separately. D.C. Code SCR, Criminal Rule 8(a). *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

When offenses of "similar character" are joined at trial there is substantial risk of prejudice. D.C. Code §§ 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Evans v. United States*, 392 A.2d 1015, 1978 D.C. App. LEXIS 327 (1978).

Question on review, in regard to propriety of trying offenses together over defendant's timely and specific objection, is whether trial record manifests a sufficient possibility of undue prejudice by reason of the joinder to indicate an abuse of discretion. D.C. Code § 23-311(a); D.C. Code SCR, Criminal Rules 8(a), 14. *Hackney v. United States*, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

Prejudice to defendant, from refusal to grant severance, is not concern where evidence of offenses would be mutually admissible at separate trials and evidence of each offense is sufficiently simple and distinct as not to confuse jury or confound defendant in presentation of different defenses to different charges. D.C. Code SCR, Criminal Rules 8(a), 14. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

The appropriateness of joinder in evidence-of-other-crimes cases must be determined by balancing inevitable prejudice to the defendant caused by the joinder against the legitimate probative force of the evidence and expedition in judicial administration. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

— Reciprocal admissibility, joined offenses.

The doctrine of mutual admissibility recognizes that the joinder for trial of two crimes does not unduly increase the likelihood that the jury will infer a criminal disposition when the rules of evidence would have permitted the admission of evidence of each crime at the separate trial of the other. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

Composite features of crimes for which defendant was tried indicated that trial court properly exercised its discretion in denying severance because crimes were so similar as to suggest identity of same wrongdoers. *Warren v. United States*, 436 A.2d 821, 1981 D.C. App. LEXIS 381 (1981).

Identity-type reciprocal admissibility, in so-called signature crimes, permits joinder where offenses are so very identical in method because of occurrence of unusual and distinctive characteristics that it is likely that they were committed by same person. *Warren v. United States*, 436 A.2d 821, 1981 D.C. App. LEXIS 381 (1981).

The two armed robberies with which defendant was charged and which were closely related in time and place were of the same or similar character within meaning of rule per-

mitting initial joinder in single indictment of offenses which are of same or similar character and were therefore properly joined. D.C. Code § 22-2901; D.C. Code SCR, Criminal Rule 8(a). *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

Propriety of initial joinder of criminal counts under Rule permitting initial joinder in single indictment of offenses which are of the same or similar character does not depend on reciprocal admissibility as determined by evidence but on general similarity between offenses as alleged in indictment. D.C. Code SCR, Criminal Rule 8(a). *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

Where evidence of two crimes charged in single indictment is reciprocally admissible, severance of crimes will be denied. D.C. Code SCR, Criminal Rule 14. *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

Generally, if evidence of joined offenses would be mutually admissible in separate trial of those offenses, severance is not required on account of "criminal propensity" prejudice. D.C. Code § 23-311(a); D.C. Code SCR, Criminal Rules 8(a), 14. *Hackney v. United States*, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

In proceeding in which defendant was convicted of two counts of first-degree murder, refusal to sever the three homicide counts against defendant and to order separate trials on each charge was not abuse of discretion, in light of fact that existence of a cover-up scheme would have rendered evidence of all the charges against defendant mutually admissible at the separate trials if severance motion had been granted and in view of indication that the degree of any prejudice to defendant was outweighed by considerations of economy and expedited judicial administration. D.C. Code §§ 22-2401, 23-311(a); D.C. Code SCR, Criminal Rules 8(a), 14. *Hackney v. United States*, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

Two robberies of cab drivers by two women were offenses "of the same or similar character" within rule allowing joinder of the two counts in same indictment if offenses charged were of same or similar character. D.C. Code SCR, Criminal Rules 8(a), 14. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

Test of mutual admissibility of offenses does not require that a single characteristic be so unique as to lead to conclusion that all were committed by the same person. D.C. Code §§ 23-311(a), 23-313; D.C. Code SCR, Criminal

Rules 8(a), 14. *Bridges v. United States*, 381 A.2d 1073, 1977 D.C. App. LEXIS 304 (1977), writ of certiorari denied by 439 U.S. 842, 99 S. Ct. 135, 58 L. Ed. 2d 141, 1978 U.S. LEXIS 2828 (1978).

— Robberies, joined offenses.

In prosecution of two defendants for assault with intent to kill and armed robbery wherein their intent was at issue, evidence of first robbery was relevant and admissible as to one defendant's intent to kill second robbery victim and to show other defendant's criminal intent and rebut his theory of innocent presence; trial judge could properly find that probative value of such evidence outweighed its potential prejudicial effect, and thus denial of severance of counts charging both robberies was proper and was not abuse of trial judge's discretion. D.C. Code SCR, Criminal Rule 14; D.C. Code § 23-313. *Bittle v. United States*, 410 A.2d 1383, 1980 D.C. App. LEXIS 236 (1980).

Evidence that defendant committed second robbery was probative of Government's charge that she committed the first robbery, where circumstances of two were so similar and so proximate in time as to tend to establish her identity, but for the evidence to be admissible, it was necessary that its probative value outweigh potential prejudice to defendant arising from propensity of jury to consider such evidence as tending to show disposition to commit crime. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 22-2901, 22-3202. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

In view of fact that evidence relating to two robberies was simple and distinct and there was no claim that jury confused it and where defendants at trial were well-prepared in their attempt to refute each charge separately and where circumstances of the two robberies were so similar and so proximate in time as to tend to establish defendant's identity, trial court did not abuse discretion in ruling that potential prejudice from admission of evidence of defendant's commission of second robbery was outweighed by highly probative value of such evidence. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 22-2901, 22-3202. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

— Sexual assaults, joined offenses.

Denial of motion to sever counts of indictment in proceeding in which accused was convicted of four rape offenses and other offenses was not abuse of discretion, in view of similar characteristics of such offenses, in which assailant entered through rear of apartments, awoke victims, threatened them with weapon, demanded silence and submission and committed no act of violence if there was compliance with

his orders, in which, in three of the cases, he sought to prevent victims from getting good look at him and cut or threatened to cut phone lines and in which he cut off any pants worn by victims. D.C. Code §§ 22-502, 22-1801(a), 22-2801, 22-3202, 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Bridges v. United States*, 381 A.2d 1073, 1977 D.C. App. LEXIS 304 (1977), writ of certiorari denied by 439 U.S. 842, 99 S. Ct. 135, 58 L. Ed. 2d 141, 1978 U.S. LEXIS 2828 (1978).

— **Simple and distinct proof, joined offenses.**

In cases not involving reciprocal admissibility of evidence, joinder may be permitted if the offenses involved are fairly separable by simple and distinct proof. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

Essence of “simple and distinct” test, as basis for joinder of offenses for trial, is that evidence be such that jury is unlikely to be confused by it or misuse it. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

— **Sufficiency of evidence, joined offenses.**

In joint trial, proof of one charge cannot be made to carry the other. D.C. Code SCR, Criminal Rules 8(a), 14; D.C. Code §§ 23-311(a), 23-313. *Tinsley v. United States*, 368 A.2d 531, 1976 D.C. App. LEXIS 442 (1976).

— **Testimony by defendant, joined offenses.**

Trial court, in prosecuting defendant and codefendants for gun-related offenses, did not abuse its discretion in failing to provide a separate trial for defendant who was charged with additional offenses of bribery and obstruction of justice; defendant failed to make a convincing showing that he had both important testimony to give concerning bribery and obstruction counts and a strong need to refrain from testifying on the gun-related offense counts. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Defendant, who was convicted of possession of dangerous weapon and four counts of first-degree murder, failed to establish abuse of discretion in denial of his motion to sever counts of indictment involving a murder, which was only homicide that defendant wished to testify about, from counts charging him with the other murders, in that defendant, by merely stating that “[I]t is very possible that the defendant will wish to take the stand with

respect to one charge and not the others,” had not presented sufficient information as to nature of testimony he wished to give on one count and his reasons for not testifying on other counts. D.C. Code §§ 22-2401, 22-3204, 23-311(a), 23-313; D.C. Code SCR, Criminal Rules 8(a), 14. *Strickland v. United States*, 389 A.2d 1325, 1978 D.C. App. LEXIS 478 (1978), writ of certiorari denied by 440 U.S. 926, 99 S. Ct. 1258, 59 L. Ed. 2d 481, 1979 U.S. LEXIS 927 (1979).

To establish that defendant has been prejudiced by joinder of charged offenses for trial, he must show clear abuse of discretion; no such abuse can be found unless it appears that jury may cumulate evidence of separate crimes to find guilt, that jury may improperly infer criminal disposition and treat the inference as evidence of guilt or that defendant may become embarrassed or confounded in presenting defenses to different charges, and, with regard to the last type of prejudice, no need for severance exists until defendant convincingly shows that he has important testimony to give concerning one count and strong need to refrain from testifying on the other. D.C. Code § 23-313; D.C. Code SCR, Criminal Rule 14. *Strickland v. United States*, 389 A.2d 1325, 1978 D.C. App. LEXIS 478 (1978), writ of certiorari denied by 440 U.S. 926, 99 S. Ct. 1258, 59 L. Ed. 2d 481, 1979 U.S. LEXIS 927 (1979).

Presumptions.

There is a strong presumption that defendants jointly charged with committing an offense will be tried together, but defendant may rebut that presumption if a sufficient degree of prejudice can be shown. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

There is a presumption in favor of joinder because joint trials conserve state funds, diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused of crime to trial. D.C. Code SCR, Criminal Rules 8(b), 14. *Carpenter v. United States*, 430 A.2d 496, 1981 D.C. App. LEXIS 267 (1981), writ of certiorari denied by 454 U.S. 852, 102 S. Ct. 295, 70 L. Ed. 2d 143, 1981 U.S. LEXIS 3520, 50 U.S.L.W. 3247 (1981).

Review.

Ordinarily, if appellate courts determine that the trial court did not fully consider all relevant

factors for severing defendants' trials, a remand for further consideration of the severance motion by the trial judge under the proper standard is in order. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

The trial court enjoys wide latitude in determining whether severance of defendants is required, and appellate court does not lightly conclude that the trial court has abused its discretion. *Williams v. United States*, 884 A.2d 587, 2005 D.C. App. LEXIS 510 (2005).

Court of Appeals reviews the trial court's denial of motions to sever for abuse of discretion, and will reverse only upon showing that defendants suffered manifest prejudice by being tried jointly. *Roy v. United States*, 871 A.2d 498, 2005 D.C. App. LEXIS 150 (2005), writ of certiorari denied by 547 U.S. 1162, 126 S. Ct. 2346, 164 L. Ed. 2d 839, 2006 U.S. LEXIS 4167, 74 U.S.L.W. 3668 (2006).

Since the trial court's decision to deny severance of offenses involving adult complainant from those offenses involving juvenile complainants relied upon the theory of mutual admissibility, the State could not argue on appeal that, despite the error in this reliance, the trial court's decision was proper because the evidence of each offense was separate and distinct. *McFerguson v. United States*, 870 A.2d 1199, 2005 D.C. App. LEXIS 142 (2005).

A denial of severance will only be overturned for an abuse of discretion. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Defendant's argument that introduction of evidence that co-defendant had previously been seen with gun was prejudicial to defendant was not raised as grounds for severing murder trial, nor did defendant object to admissibility of gun evidence on that ground during trial, and thus argument would be reviewed for plain error on appeal. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Trial court did not commit plain error in denying defendant's motion for severance of murder trial on ground that introduction of evidence that co-defendant had previously been seen with gun was prejudicial to defendant; gun was admitted into evidence for limited, permissible purpose, to show that defendants had means to commit crime, and, even if evidence were only probative of the charges against co-defendant, there was no evidence that defendant's substantial rights were affected, since trial court gave limiting instructions to jury that they should think of proceedings as two separate trials and that they were to consider evidence against defendants separately. *McCullough v. United States*, 827 A.2d 48, 2003 D.C. App. LEXIS 425 (2003).

Misjoinder is subject to a harmless error analysis. *Sanders v. United States*, 809 A.2d

584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Order denying severance of trials for defendants jointly charged with committing offense will not be disturbed absent abuse of discretion. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Finding of abuse of discretion in denial of severance of trials for defendants jointly charged with committing offense requires a determination that joint trial did in fact result in a defendant being denied a fair trial and due process of law. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

An order denying severance of criminal offenses contained within one indictment may be reversed only upon clear showing of abuse of discretion. D.C. Code SCR, Criminal Rule 14. *Winestock v. United States*, 429 A.2d 519, 1981 D.C. App. LEXIS 253 (1981).

Decision on severance is left to discretion of trial court; reviewing court will disturb decision only if there has been an abuse of discretion. D.C. Code SCR, Criminal Rule 14; D.C. Code § 23-313. *Bittle v. United States*, 410 A.2d 1383, 1980 D.C. App. LEXIS 236 (1980).

Standard of review, in regard to a ruling on consolidation or severance motion, is abuse of trial court discretion; to demonstrate such abuse, an appellant must make a strong showing of prejudice rather than merely show that separate trials would provide a better chance for acquittal. D.C. Code § 23-313; D.C. Code SCR, Criminal Rules 8(a), 13, 14. *Grant v. United States*, 402 A.2d 405, 1979 D.C. App. LEXIS 366 (1979).

Misjoinder is error as matter of law, but refusal to grant severance is error only if it is

an abuse of discretion. D.C. Code SCR, Criminal Rules 8(a), 14. *Samuels v. United States*, 385 A.2d 16, 1978 D.C. App. LEXIS 445 (1978).

§ 23-314. Joinder of inconsistent offenses concerning the same property. [Repealed].

Repealed.

(Dec. 1, 1982, D.C. Law 4-164, § 602(a), 29 DCR 3976.)

Prior Codifications. — 1981 Ed., § 23-314.

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the

Judiciary. The Bill was adopted on first, amended first and second reading on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned act No. 4-238 and transmitted to both Houses of Congress for its review.

Subchapter III. Sufficiency.

§ 23-321. Description of money.

In every indictment or information, except for forgery, in which it is necessary to make an averment as to any money or bank bill or notes, United States Treasury notes, postal and fractional currency, or other bills, bonds, or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money, bills, notes, currency, or bonds simply as money, without specifying any particular coin, note, bill, or bond; and such allegation shall be sustained by proof that the accused has stolen or embezzled any amount of coin, or any such note, bill, currency, or bond, although the particular amount or species of such coin, note, bill, currency, or bond be not proved.

(July 29, 1970, 84 Stat. 612, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-321.

1973 Ed., § 23-321.

§ 23-322. Intent to defraud.

In an indictment or information in which it is necessary to allege an intent to defraud, it shall be sufficient to allege that the party accused did the act complained of with intent to defraud, without alleging an intent to defraud any particular person or body corporate. On the trial of such an indictment or information it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove a general intent to defraud.

(July 29, 1970, 84 Stat. 612, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Forgery, see § 22-3241.

Fraud, see § 22-3821.

Prior Codifications. — 1981 Ed., § 23-322.

1973 Ed., § 23-322.

§ 23-323. Perjury.

In every information or indictment for perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, or before whom the oath was taken (averring such court, or person or persons, to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record of proceeding either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed; any law, usage, or custom to the contrary notwithstanding.

(July 29, 1970, 84 Stat. 612, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-323. 1973 Ed., § 23-323.

CASE NOTES

ANALYSIS

Construction and application.
Materiality.
Particularity.

Construction and application.

Perjury indictment which tracks the statute will be defective unless it also includes particulars so as to enable defendant to prepare to meet the charge. D.C. Code §§ 22-2501, 23-323; D.C. Code SCR, Criminal Rule 7(c). *Hsu v. United States*, 392 A.2d 972, 1978 D.C. App. LEXIS 321 (1978).

As to allegations of falsity required for valid perjury indictment, procedural requirements of section of criminal procedure provision pertaining to information or indictment for perjury are the same as those in superior court criminal rule pertaining to nature and contents of indictment or information. D.C. Code § 23-323; D.C. Code SCR, Criminal Rule 7(c). *Hsu v. United States*, 392 A.2d 972, 1978 D.C. App. LEXIS 321 (1978).

Perjury indictment sufficiently alleged falsity by charging that defendant, having taken an oath that he would testify truly, unlawfully, wilfully, knowingly and contrary to such oath, stated material matters which he did not believe to be true. D.C. Code §§ 22-2501, 23-323; D.C. Code SCR, Criminal Rule 7(c). *Hsu v.*

United States, 392 A.2d 972, 1978 D.C. App. LEXIS 321 (1978).

Materiality.

Simple allegation of materiality did not render perjury indictment deficient for lack of specificity as to materiality alleged. D.C. Code §§ 22-2501, 23-323; D.C. Code SCR, Criminal Rule 7(c). *Hsu v. United States*, 392 A.2d 972, 1978 D.C. App. LEXIS 321 (1978).

Face of indictment did not belie materiality of defendant's denial that he had been personally served temporary restraining order, since defendant's response, quoted in indictment, that he had learned about order from judge's clerk before hearing on order to show cause was not admission of receipt of restraining order, but even if it were such an admission, it would not necessarily negate materiality of denial of service of temporary restraining order. D.C. Code §§ 22-2501, 23-323; D.C. Code SCR, Criminal Rule 7(c). *Hsu v. United States*, 392 A.2d 972, 1978 D.C. App. LEXIS 321 (1978).

Particularity.

Falsity was alleged with sufficient particularity in perjury indictment which repeated statutory language and referred to defendant's oath before named judge on stated date in specific action and further specified question and offending answer defendant allegedly gave. D.C. Code §§ 22-2501, 23-323; D.C. Code SCR, Criminal Rule 7(c). *Hsu v. United States*, 392 A.2d 972, 1978 D.C. App. LEXIS 321 (1978).

§ 23-324. Subornation of perjury.

In every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit perjury, it shall be sufficient

to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed, any law, usage, or custom to the contrary notwithstanding.

(July 29, 1970, 84 Stat. 612, Pub. L. 91-358, title II, § 210(a); May 10, 2005, D.C. Law 15-356, § 3(a)(1), 52 DCR 1178.)

Prior Codifications. — 1981 Ed., § 23-324. 1973 Ed., § 23-324.

Effect of amendments. — D.C. Law 15-356, in the section heading, substituted “subordination” for “subordination”.

Legislative history of Law 15-356. — Law 15-356, the “Felony Sexual Assault Statute of Limitations Act of 2004”, was introduced in Council and assigned Bill No. 15-785, which

was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-634 and transmitted to both Houses of Congress for its review. D.C. Law 15-356 became effective on May 2005.

Subchapter IV. Fictitious Name Indictments.

§ 23-331. Fictitious name indictments for first or second degree sexual abuse or first or second degree child sexual abuse.

(a) A defendant may be prosecuted for first or second degree sexual abuse or first or second degree child sexual abuse by indictment under a fictitious name, such as “John Doe” or “Jane Doe,” if, at the time of indictment, the defendant’s true name is unknown and the defendant’s identity has been established with reasonable certainty by the means of forensic testing of nuclear deoxyribonucleic acid (“DNA”) evidence or DNA evidence with a comparable level of accuracy with nuclear DNA evidence.

(b) Mitochondrial DNA (“mtDNA”) and Y-DNA cannot be used for the purposes of prosecuting by indictment under a fictitious name a defendant whose true name is unknown under subsection (a) of this section.

(c) Nothing in this section shall be construed as prohibiting the use or admissibility of mtDNA, Y-DNA, or similar genetic material for any purpose other than obtaining a fictitious name indictment pursuant to subsection (a) of this section.

(May 10, 2005, D.C. Law 15-356, § 3(b), 52 DCR 1176; Mar. 2, 2007, D.C. Law 16-191, § 45, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191 made a technical change in the language of D.C. Law 15-356 that resulted in no change in text.

Legislative history of Law 15-356. — Law 15-356, the “Felony Sexual Assault Statute of Limitations Act of 2004”, was introduced in Council and assigned Bill No. 15-785, which was referred to the Committee on Judiciary.

The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-634 and transmitted to both Houses of Congress for its review. D.C. Law 15-356 became effective on May 10, 2005.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of

2006", was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Effective date. — Section 4 of D.C. Law 15-356 provided as follows: "Sec. 4. Applicability. This act shall apply to an offense committed before its effective date only if the statute of limitations for the offense has not expired prior to the effective date."

CHAPTER 5. WARRANTS AND ARRESTS.

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Sec.

23-547. Procedure for authorization or approval of interception of wire or oral communications.

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23-591. [Repealed].

Subchapter I. Definitions.

§ 23-501. Definitions.

As used in subchapters II, IV, and V of this chapter —

(1) The term “judicial officer” means a judge of the Superior Court of the District of Columbia or of the United States District Court for the District of Columbia, or a United States commissioner or magistrate for the District of Columbia.

(2) The term “law enforcement officer” means an officer or member of the Metropolitan Police Department of the District of Columbia, or of any other police force operating in the District of Columbia; an investigative officer or agent of the United States; animal control officer employed by the District of Columbia; or the Fire Marshal and any member of the Fire and Arson Investigation Unit of the Fire Prevention Bureau of the Fire Department of the

District of Columbia, for the purpose of enforcing arson and the fire safety laws of the District of Columbia, who is so designated in writing by the Fire Chief.

(3) The term "prosecutor" means the United States Attorney for the District of Columbia or his assistant, the Corporation Counsel of the District of Columbia [Attorney General for the District of Columbia] or his assistant, or an attorney employed by, and who has entered an appearance on behalf of, the United States or the District of Columbia in a criminal case or in an investigation being conducted by a grand jury.

(July 29, 1970, 84 Stat. 613, Pub. L. 91-358, title II, § 210(a); Oct. 18, 1988, D.C. Law 7-176, § 9(b), 35 DCR 4787; Mar. 26, 1999, D.C. Law 12-176, § 4, 45 DCR 5662.)

Prior Codifications. — 1981 Ed., § 23-501. 1973 Ed., § 23-501.

Emergency legislation. — For temporary amendment of section, see § 4 of the Arson Investigators Emergency Amendment Act of 1998 (D.C. Act 12-406, July 13, 1998, 45 DCR 4833), § 4 of the Arson Investigators Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-466, October 28, 1998, 45 DCR 7838), and § 4 of the Arson Investigators Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-539, December 24, 1998, 46 DCR 297).

Legislative history of Law 7-176. — Law 7-176, the "Dangerous Dog Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-276, which was referred to the Com-

mittee on Human Services. The Bill was adopted on first and second readings on May 17, 1988 and May 31, 1988, respectively. Signed by the Mayor on June 9, 1988, it was assigned Act No. 7-190 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-176. — Law 12-176, the "Arson Investigator Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-485, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-418 and transmitted to both Houses of Congress for its review. D.C. Law 12-176 became effective on March 26, 1999.

CASE NOTES

ANALYSIS

Construction and application.

Federal offenses.

Law enforcement officers.

—Fresh pursuit, law enforcement officers.

—In general.

Construction and application.

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(h); Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C. United States v. Thomas, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating

to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 22-1515(a), 22-3601, 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-402, 33-414(h), 33-416; Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C. United States v. Thomas, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Federal offenses.

District of Columbia Code warrant provisions are not inapplicable to warrants issued in connection with federal offenses. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-501, 23-521(f)(5), 23-522(c)(1), 23-523(b), 23-1322, 33-414(h); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed.Rules

Crim.Proc. rule 41(d), 18 U.S.C. United States v. Gooding, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Under District of Columbia statute providing that any warrant issued by magistrate may be executed by any member of police force, Metropolitan Police had authority to execute federal search warrant based on violation of Controlled Substances Act. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 4-138, 23-501(1); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C.; Organization Order No. 153, D.C. Code Title I, Appendix III. United States v. Thomas, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Law enforcement officers.

— Fresh pursuit, law enforcement officers.

Only authority for Maryland state police officer to arrest person within District of Columbia exists by virtue of Uniform Act on Fresh Pursuit which grants peace officer of another state who enters District of Columbia in fresh pursuit of person believed to have committed felony same authority to arrest as District of Columbia peace officers. D.C. Code 1961, § 23-501. District of Columbia v. Perry, 215 A.2d 845, 1966 D.C. App. LEXIS 129 (App. 1966).

Arrest of defendant by Maryland state police officer within District of Columbia for speeding, a misdemeanor in Maryland, was unauthorized by Uniform Act on Fresh Pursuit. Code Md.1957, art. 66 ½, § 338; D.C. Code 1961, § 23-501. District of Columbia v. Perry, 215

A.2d 845, 1966 D.C. App. LEXIS 129 (App. 1966).

— In general.

A deputy United States marshal is a "law enforcement officer" within meaning of District of Columbia Code and is authorized to make an arrest without a warrant for commission of a misdemeanor in his presence. D.C. Code §§ 23-501(2), 23-581(a)(1)(B). Lucas v. United States, 443 F. Supp. 539, 1977 U.S. Dist. LEXIS 13669 (1977), affirmed without opinion by 590 F.2d 356, 191 U.S. App. D.C. 225 (1979).

Deputy United States marshal was legally justified in stopping and detaining plaintiff on steps of courthouse for questioning in regard to a possible breach of courtroom security and in requesting a driver's license in an effort to obtain trustworthy identification from plaintiff, and once plaintiff forcefully grabbed deputy, probable cause to arrest plaintiff for assaulting and interfering with a federal officer in performance of his official duties existed, notwithstanding whether deputy was placed in fear or whether bodily injury was inflicted, and operated as a defense under common law of District of Columbia to deputy and United States, sued under theory of respondeat superior, for torts of assault, battery, false arrest and personal injury. 18 U.S.C. §§ 111, 1114, 3053; 18 U.S.C. §§ 1346(b), 2672, 2674, 2680(h); D.C. Code §§ 22-504, 23-501(2), 23-581(a)(1)(B). Lucas v. United States, 443 F. Supp. 539, 1977 U.S. Dist. LEXIS 13669 (1977), affirmed without opinion by 590 F.2d 356, 191 U.S. App. D.C. 225 (1979).

Police officer's refusal to allow business owner to enter premises after another person claimed ownership and called police was not a "seizure"; the dispute between concerning the right to the premises was being litigated, and the police were confronted with conflicting information on ownership. Weishapl v. Sowers, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

Subchapter II. Search Warrants.

§ 23-521. Nature and issuance of search warrants.

(a) Under circumstances described in this subchapter, a judicial officer may issue a search warrant upon application of a law enforcement officer or prosecutor. A warrant may authorize a search to be conducted anywhere in the District of Columbia and may be executed pursuant to its terms.

(b) A search warrant may direct a search of any or all of the following:

- (1) one or more designated or described places or premises;
- (2) one or more designated or described vehicles;
- (3) one or more designated or described physical objects; or
- (4) designated persons.

(c) A search warrant may direct the seizure of designated property or kinds of property, and the seizure may include, to such extent as is reasonable under

all the circumstances, taking physical or other impressions, or performing chemical, scientific, or other tests or experiments of, from, or upon designated premises, vehicles, or objects.

(d) Property is subject to seizure pursuant to a search warrant if there is probable cause to believe that it —

(1) is stolen or embezzled;

(2) is contraband or otherwise illegally possessed;

(3) has been used or is possessed for the purpose of being used, or is designed or intended to be used, to commit or conceal the commission of a criminal offense; or

(4) constitutes evidence of or tends to demonstrate the commission of an offense, the identity of a person participating in the commission of an offense, or the identity of a person who is the victim of a crime.

(e) A search warrant may be addressed to a specific law enforcement officer or to any classification of officers of the Metropolitan Police Department of the District of Columbia or other agency authorized to make arrests or execute process in the District of Columbia.

(f) A search warrant shall contain —

(1) the name of the issuing court, the name and signature of the issuing judicial officer, and the date of issuance;

(2) if the warrant is addressed to a specific officer, the name of that officer, otherwise, the classifications of officers to whom the warrant is addressed;

(3) a designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) a description of the property whose seizure is the object of the warrant;

(5) a direction that the warrant be executed during the hours of daylight or, where the judicial officers have found cause therefor, including one of the grounds set forth in section 23-522(c)(1), an authorization for execution at any time of day or night; and

(6) a direction that the warrant and an inventory of any property seized pursuant thereto be returned to the court on the next court day after its execution.

(July 29, 1970, 84 Stat. 614, Pub. L. 91-358, title II, § 210(a); Oct. 26, 1974, 88 Stat. 1455, Pub. L. 93-481, § 4(b); Apr. 30, 1988, D.C. Law 7-104, § 7(a), 35 DCR 147; June 3, 2011, D.C. Law 18-376, § 4, 58 DCR 944.)

Cross references. — Alcoholic Beverage Control Act, search warrants, see § 25-803.

Businesses, examination of books and search of premises of certain businesses, see § 5-117.02.

Cruelty to animals, search warrants to prevent, see § 22-1005.

Gaming houses or bawdy houses, authorization of searches, see § 5-115.06.

Milk containers, search warrants to discover illegal use, see §§ 36-125 and 36-155.

Pawned or pledged property, examination of property, see § 5-117.03.

Raids, prohibition of advance information of raids to attorneys or bondsmen, see § 23-1109.

Uniform Narcotic Drug Act, search warrants, see § 48-902.04.

Weights, Measures, and Markets, warrantless searches by Director, see § 37-201.24.

Section references. — This section is referred to in §§ 23-522, 23-523 and 23-524.

Prior Codifications. — 1981 Ed., § 23-521. 1973 Ed., § 23-521.

Effect of amendments. — D.C. Law 18-376 rewrote subsec. (d)(4), which formerly read:

“(4) constitutes evidence of or tends to demonstrate the commission of an offense or the identity of a person participating in the commission of an offense.”

Legislative history of Law 7-104. — Law

7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-376. — Law 18-376, the "Attorney General Subpoena Au-

thority Authorization Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-1009, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 9, 2010, and December 7, 2010, respectively. Signed by the Mayor on January 20, 2011, it was assigned Act No. 18-712 and transmitted to both Houses of Congress for its review. D.C. Law 18-376 became effective on June 3, 2011.

CASE NOTES

ANALYSIS

Construction and application.

Entry.

Issuance of warrant.

Multiple sovereignties.

—Authority to issue and execute, multiple sovereignties.

—In general.

Permissible subjects, objects, and purposes.

Probable cause.

—In general.

—Informants, probable cause.

—Staleness, probable cause.

Review.

Scope of search.

Standing to challenge search.

Suppression.

Time of execution.

Construction and application.

General provision relating to search warrants found in the District of Columbia Code and then incorporated in similar form into the new Superior Court Rules was intended to be a counterpart to comparable Federal Rules of Criminal Procedure. D.C. Code § 23-521 et seq.; Fed.Rules Crim.Proc. rule 41, 18 U.S.C. Gooding v. United States, 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (U.S. Dist. Col. 1974).

Where there is a specific statute relating to issuance and execution of search warrants, that particular statute as a general matter controls over any more diffuse search warrant legislation or policy. United States v. Alatishe, 616 F. Supp. 1406, 1985 U.S. Dist. LEXIS 16412 (1985).

Knock-and-announce statutes regarding entry to a dwelling by police executing a search warrant should be accorded a generous construction rather than a grudging one. District of Columbia v. Mancous, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. Comprehensive Drug Abuse Prevention and Control Act of

1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(h); Fed.Rules Crim.Proc. rule 41(c). United States v. Thomas, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Entry.

Officer's failure to knock and announce at outer door did not give rise to violation of "knock-and-announce" statute, where doorway gave entry into a common hallway some distance from apartment which officers sought to search. 18 U.S.C. § 3109. United States v. Alatishe, 616 F. Supp. 1406, 1985 U.S. Dist. LEXIS 16412 (1985).

The Fourth Amendment incorporates the common-law requirement that police officers entering a dwelling must knock on the door and announce their identity and purpose before attempting forcible entry. Artis v. United States, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

The knock and announce rule is not designed to protect the privacy of the home or the interests of all who reside there in preserving that privacy even in their absence; rather, it is to warn those persons who are present to prepare themselves for a lawful police intrusion and to open the door and peaceably admit the police and, thus, serves to protect (1) the interest in avoiding needless shock, fright, embarrassment, and violence that might be caused by an unannounced entry and (2) the interest in avoiding physical damage to property. Artis v. United States, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

An entry through a closed but unlocked door is considered a "breaking" and hence subject to the statutory "knock-and-announce" rule for entry to a dwelling by police executing a search

warrant. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

The common-law "knock-and-announce" principle extant at the time of the framing of the Constitution forms a part of the reasonableness inquiry under the Fourth Amendment, regarding entry to a dwelling by police executing a search warrant. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

At least three purposes underlie the knock-and-announce requirement for entry to a dwelling by police executing a search warrant: (1) it reduces the potential for violence to both the officers and the occupants of the house into which entry is sought; (2) it guards against the needless destruction of private property; and (3) it symbolizes the respect for individual privacy summarized in the adage that "a man's house is his castle." *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

The protection of a citizen's home from forced entry is at the core of the values secured by the Fourth Amendment and by the knock-and-announce statute. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

Neither inevitable discovery doctrine nor independent source doctrine excused violation of "knock and announce" statute by police officers executing warrant for search of dwelling. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

Issuance of warrant.

The issuance of a search warrant signifies that a judicial officer has made a determination that there are reasonable grounds to believe that the information underlying the warrant is true and is of sufficient reliability and timeliness to justify a search. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Multiple sovereignties.

— Authority to issue and execute, multiple sovereignties.

District of Columbia superior court judges were authorized to issue search warrants to United States park police under District of Columbia Uniform Controlled Substances Act, notwithstanding claim that special search warrant provision of the Act [D.C. Code 1981, § 33-565] limits issuance of such warrants to the metropolitan police department of the District of Columbia. *United States v. Alatishe*, 616 F. Supp. 1406, 1985 U.S. Dist. LEXIS 16412 (1985).

In the future, any reliance on warrant issued to United States park police pursuant to local narcotics law, which by its express terms does not permit issuance to or execution by park

police, will not be "objectively reasonable." D.C. Code 1981, § 33-565(e). *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

United States park police officers cannot properly be issued search warrants pursuant to local narcotics law; plain language of local law, reinforced by scant legislative history, provides that search warrants can be issued only to chief of police of district or members of metropolitan police department. D.C. Code 1981, § 33-565(e). *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

In determining whether to suppress narcotics evidence seized pursuant to search warrant, which was later found to be invalid insofar as it was issued to and executed by United States park police officers who were not statutorily authorized to apply for or execute search warrants issued pursuant to local narcotics law, "objectively reasonable" standard would be applied; evidentiary hearing was required to determine whether United States park police officers' reliance on warrant, which was issued to them in violation of express terms of statute, was "objectively reasonable." D.C. Code 1981, § 33-565. *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

— In general.

Operative facts surrounding search for narcotics indicated that standards for issuance of search warrant were governed by federal statute rather than local laws of District of Columbia, where, inter alia, a United States attorney filed warrant application with a federal magistrate, alleging violations of United States Code for which defendant was later indicted, and neither application nor supporting affidavits contained any mention of local narcotics laws; failure of Congress to include in federal statute a special provision authorizing District of Columbia police officers to obtain search warrants for investigating federal offenses could not be taken as a deliberate exclusion in view of the overall statutory framework. D.C. Code § 23-521 et seq.; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed. Rules Crim. Proc. rule 41, 18 U.S.C. *Gooding v. United States*, 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (U.S. Dist. Col. 1974).

District of Columbia Code warrant provisions are not inapplicable to warrants issued in connection with federal offenses. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-501, 23-521(f)(5), 23-522(c)(1), 23-523(b), 23-1322, 33-414(h); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed. Rules Crim. Proc. rule 41(d) *United States v. Gooding*, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS

12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Although application for search warrant issued to United States park police did not state whether warrant was applied for under federal or local law, warrant was issued under local law, even though applicants were federal officers, in light of evidence that application for warrant was filed in superior court, not federal court; warrant directed executing officers to file copy of warrant and return with superior court, not with federal magistrate as required by federal law; warrant was returned to issuing judge in superior court, not to federal magistrate; and defendant, whose premises were searched pursuant to warrant, was charged only under local law. D.C. Code 1981, § 33-565; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509, 21 U.S.C. § 879; Fed.R.Cr.Proc. Rule 41(a) *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

Permissible subjects, objects, and purposes.

Trial court's order granting application for search warrant in order that three objects, believed to be bullets shot at defendant during armed robbery, be removed from defendant's body was proper under search warrant statute since statute was broad enough to encompass the order. D.C. Code §§ 17-305(a), 23-521. *Hughes v. United States*, 429 A.2d 1339, 1981 D.C. App. LEXIS 260 (1981).

Defendant charged with rape may not be required to submit blood sample to be tested for HIV retrovirus. *United States v. Garmon*, 120 WLR 105 (Super. Ct. 1992).

Probable cause.

— In general.

Under totality of circumstances test, affidavits and other information formed probable cause for issuance of search warrant of defendant's motel room where two separate informants corroborated information given by the other, suspects had records of involvement in drug trafficking in past, activities were suspicious, and trained police officer could reasonably draw inference that defendant was engaged in illegal drug trafficking based from these elements. *United States v. Laws*, 808 F.2d 92, 1986 U.S. App. LEXIS 34175 (C.A.D.C. 1986).

Affidavits in support of search warrant were sufficiently specific to establish nexus between two hotel rooms searched and an illicit drug enterprise, though neither informants nor police officer had actually observed illegal activity or contraband in rooms. *United States v. Laws*, 808 F.2d 92, 1986 U.S. App. LEXIS 34175 (C.A.D.C. 1986).

The question of probable cause to search is to be viewed from the vantage point of a prudent, reasonably cautious police officer guided by his experience and training. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Probable cause to search is measured by the totality of the circumstances. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Probable cause for issuance of search warrant to take blood sample from defendant was established by statements in supporting affidavit that homicide victim was murdered by strangulation, that defendant was a co-worker of victim and lived short distance away from her apartment, that witnesses identified potential suspect as a "stocky" man who called victim's first name at front door of apartment building, and that defendant had been arrested on two prior occasions for similar crimes, i.e., an assault and a murder in which both victims were choked. *Jones v. United States*, 828 A.2d 169, 2003 D.C. App. LEXIS 434 (2003), writ of certiorari denied by 540 U.S. 1166, 124 S. Ct. 1182, 157 L. Ed. 2d 1214, 2004 U.S. LEXIS 915, 72 U.S.L.W. 3487 (2004).

The requirement of probable cause to justify the seizure of physical evidence is a flexible, common-sense standard, which merely requires that the facts available to the officer would warrant a person of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

The question of probable cause to search or to arrest is to be viewed from the vantage point of a prudent, reasonably cautious police officer guided by his experience and training. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

Probable cause to search or to arrest is measured by the totality of the circumstances. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

Probable cause to search convenience store for drugs was demonstrated by affidavit that crack cocaine was being sold near store, confidential source engaged a known drug seller in a conversation, the seller then entered the store, exited it a short time later, and made a hand to hand action with the confidential source, and the source turned over crack cocaine to the police although he had none before the transaction; even if the confidential source was not a trustworthy source of information that drugs were probably inside of the store, the investigating officer was experienced in drug investigations and averred in the affidavit that illicit

drugs are generally kept in a convenient place in order to limit general access to them, but yet have them available for sale. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

Issuance of search warrant authorizing seizure of evidence tending to establish connection between coconspirators was supported by probable cause, where affidavit in support of warrant application for search of coconspirator's apartment stated, based upon witness's averments, that coconspirators were close associates who maintained communication via telephone and written documentation. *U.S. Const.Amend. 4. Irving v. United States*, 673 A.2d 1284, 1996 D.C. App. LEXIS 53 (1996).

Search warrant which authorized search of coconspirator's apartment for seizure of documents tending to establish connection between coconspirators was not impermissibly vague, in light of affidavit supporting warrant application which averred that coconspirators communicated by written documentation. *U.S. Const.Amend. 4. Irving v. United States*, 673 A.2d 1284, 1996 D.C. App. LEXIS 53 (1996).

— Informants, probable cause.

Reliability of search warrant informant's affidavit may be established by external circumstances tending to show that information supplied deserves credit, or that informant has proven credible in other instances. *United States v. Laws*, 808 F.2d 92, 1986 U.S. App. LEXIS 34175 (C.A.D.C. 1986).

In measuring overall reliability of tip, fair indication of informant's basis of knowledge may compensate for less than conclusive demonstration of credibility. *United States v. Laws*, 808 F.2d 92, 1986 U.S. App. LEXIS 34175 (C.A.D.C. 1986).

Tip contained in first affidavit, standing alone, did not provide substantial basis for finding of probable cause to issue search warrant for defendant's motel room, where affidavit did not indicate how informant obtained information regarding illegal drug transactions nor did it indicate informant's veracity, though police attempted to corroborate informant's information by checking for criminal records on individuals named in affidavits. *United States v. Laws*, 808 F.2d 92, 1986 U.S. App. LEXIS 34175 (C.A.D.C. 1986).

Independent police investigation may make sufficient showing of probable cause for issuance of search warrant even where investigation began with tip from anonymous informant whose credibility, reliability, and source of information were questionable or unknown. *United States v. Berry*, 463 F.2d 1278, 1972 U.S. App. LEXIS 9265 (C.A.D.C. 1972).

Failure of search warrant affidavit to set forth factual circumstances from which magistrate could appraise informant's credibility and

to state circumstances upon which informant based his conclusion was not fatal where, according to affidavits, information triggered investigation by officers who set out details and results of their investigation of gambling and lottery law violations. *D.C. Code §§ 22-1501, 22-1502, 22-1505; 18 U.S.C. § 294(c). United States v. Berry*, 463 F.2d 1278, 1972 U.S. App. LEXIS 9265 (C.A.D.C. 1972).

Search warrant affidavit reciting uncorroborated tip that first person was picking up numbers and taking them to address of second person, a well-known gambler, together with investigative officers' observations of observed comings and goings and delivery of "small package," all in accordance with officers' knowledge as to operation of numbers game, was sufficient to support warrant for search, leading to lottery and gambling charges, where affidavit recited that participants had gambling law convictions and that premises had been established by police records to have recently housed gambling operation, although it would have been helpful had officers elaborated on *modus operandi* of numbers operation. *D.C. Code §§ 22-1501, 22-1502, 22-1505; 18 U.S.C. § 294(c). United States v. Berry*, 463 F.2d 1278, 1972 U.S. App. LEXIS 9265 (C.A.D.C. 1972).

Probable cause to search defendant's apartment for evidence of drug distribution and victim's murder was demonstrated by affidavit; affidavit stated that confidential informant had told police that defendant traveled to particular location to pick up drugs and that defendant would come back to apartment to prepare it for distribution, affidavit stated that eyewitness to victim's murder positively identified defendant as one of individuals who shot at victim. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

— Staleness, probable cause.

Information contained in affidavits in support of search warrant were not too stale to satisfy constitutional requirements, where entire episode from informant's tip to issuance of warrant consumed less than ten hours. *United States v. Laws*, 808 F.2d 92, 1986 U.S. App. LEXIS 34175 (C.A.D.C. 1986).

Although some information contained in officer's probable cause affidavit was dated six years prior to search, in investigation of distribution of controlled substance, information was not stale, since information consisted of ongoing criminal activity of defendant and others, and older information was coupled with recently obtained information. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Instead of measuring staleness of facts contained in affidavit for search warrant solely by counting the days on a calendar, courts must also concern themselves with the following

variables: the character of the crime the background of the criminal, the thing to be seized, and the place to be searched. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Review.

In considering a challenge to the validity of a search warrant, reviewing court accords deference to the decision of the judge or magistrate who issued the warrant. *Jones v. United States*, 828 A.2d 169, 2003 D.C. App. LEXIS 434 (2003), writ of certiorari denied by 540 U.S. 1166, 124 S. Ct. 1182, 157 L. Ed. 2d 1214, 2004 U.S. LEXIS 915, 72 U.S.L.W. 3487 (2004).

An appellate court reviewing a challenge to validity of a warrant should accord deference to the judicial decision of the judge or magistrate who issued the warrant, so long as there is a substantial basis for concluding the existence of probable cause. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

In reviewing a challenge to the validity of a warrant, an appellate court considers only the content of the supporting affidavit. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Whether probable cause to seize physical evidence exists is a mixed question of law and fact in which legal questions predominate and, consequently, an appellate court reviews the trial court's legal determinations de novo while giving deferential review to the underlying facts. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

In reviewing a challenge to the validity of a warrant, the Court of Appeals may consider only the content of the supporting affidavit. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

The court reviewing a challenge to the validity of a warrant should accord deference to the judicial decision of the judge or magistrate who issued the warrant, so long as there is a substantial basis for concluding the existence of probable cause. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

When reviewing challenge to search warrant, appellate court accords great deference to determination of magistrate. U.S.C. Const. Amend. 4. *Irving v. United States*, 673 A.2d 1284, 1996 D.C. App. LEXIS 53 (1996).

Appellate court's function in reviewing challenge to search warrant is only to ensure that magistrate had substantial basis for concluding existence of probable cause. U.S.C. Const. Amend. 4. *Irving v. United States*, 673 A.2d 1284, 1996 D.C. App. LEXIS 53 (1996).

Scope of search.

Purse which was sitting on table apart from

its owner was not being "worn" by owner and search thereof did not constitute search of owner's person. U.S. Const. Amend. 4. *United States v. Johnson*, 475 F.2d 977, 1973 U.S. App. LEXIS 11632 (C.A.D.C. 1973).

Where search warrant was issued for apartment on affidavit which recited that within preceding two weeks information had come to police from reliable informant that narcotics were being sold in apartment and that agent had purchased narcotics at apartment, and officers after announcing their purpose heard noise followed by sound of window breaking and upon entry found party attempting to escape through window, search of purse which belonged to defendant who was in apartment and which was sitting on table was proper. U.S. Const. Amend. 4. *United States v. Johnson*, 475 F.2d 977, 1973 U.S. App. LEXIS 11632 (C.A.D.C. 1973).

Where search warrant authorized officers to search entire apartment for narcotics, apartment visitor's purse which was sitting on table could properly be searched in pursuit of items for which warrant had issued. U.S. Const. Amend. 4. *United States v. Johnson*, 475 F.2d 977, 1973 U.S. App. LEXIS 11632 (C.A.D.C. 1973).

It was objectively unreasonable for District of Columbia police officers to rely upon search warrant in executing nighttime search of residence, and thus officers were not entitled to qualified immunity from liability in § 1983 action, where District of Columbia law specifically prohibited nighttime searches unless expressly authorized, search warrant did not explicitly authorize nighttime search, and search warrant affidavit did not request or establish probable cause for nighttime search. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

Under District of Columbia law, search warrant did not authorize nighttime search, and thus officers' planning and execution of nighttime search of residence violated Fourth Amendment, where preprinted search warrant did not strike out "daytime" or "any time of the day or night" designations, and search warrant affidavit did not request or provide any evidence justifying nighttime search. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

Partial strip search of halfway house inmate was reasonable, and did not implicate Fourth Amendment protections; search was conducted because there had been prior seizure of contraband from inmate, inmate was observed by corrections officer acting in peculiar manner upon his return to facility in early evening, and

there had been seizure of contraband from another inmate earlier that day, search was conducted in restroom and was halted after drugs were recovered, and no body-cavity search was conducted. *Griffin v. United States*, 850 A.2d 313, 2004 D.C. App. LEXIS 267 (2004).

Although the Fourth Amendment is violated when property is seized in the absence of a warrant issued on the basis of probable cause, the plain view doctrine serves as one exception to this requirement by allowing the warrantless seizure of evidence observed in plain sight when: (1) an officer does not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed; (2) the evidence's incriminating character is immediately apparent; and (3) the officer has a lawful right of access to the object itself. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Seizure of newspaper article about conspirator's arrest for murder was within scope of search warrant which authorized search of co-conspirator's apartment for seizure of documents tending to establish connection between coconspirators. *U.S. Const. Amend. 4. Irving v. United States*, 673 A.2d 1284, 1996 D.C. App. LEXIS 53 (1996).

Before police may seize item during search, it must either be particularly described in valid search warrant or police must have found it in plain view during course of lawful search and have probable cause to believe that it is incriminating evidence. *U.S. Const. Amend. 4. Irving v. United States*, 673 A.2d 1284, 1996 D.C. App. LEXIS 53 (1996).

Warrant for search of premises at designated street address was sufficient to include back room of shop which had formerly had separate entrance on another street and which could be entered only through the apparel shop address. *Short v. District of Columbia*, 300 A.2d 450, 1973 D.C. App. LEXIS 225 (1973).

Standing to challenge search.

Defendants, who were employees of charter school, lacked standing to challenge police officers' warrantless entry into school and subsequent search and seizure, as defendants did not have legitimate expectation of privacy in hallway or foyer, or outer portion of main office when officers entered school. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

Question of whether an employee has a reasonable expectation of privacy in the invaded place, as necessary for employee to have standing to challenge validity of search and seizure, must be addressed on a case-by-case basis.

Gatlin v. United States, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

A legitimate expectation of privacy in the invaded place, which defendant must have in order to challenge validity of search and seizure, turns on consideration of all of the surrounding circumstances, including but not limited to defendant's possessory interest. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

Resident washing his car near his dwelling, and resident directly across the street from the dwelling, had standing to challenge violation by police of "knock and announce" statute regarding execution of search warrant for the dwelling, where the residents were within earshot and eyeshot of the dwelling. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

An individual with the present possessory interest in the premises searched has standing to challenge that search even though he was not present when the search was made. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

Suppression.

The government's violation of District of Columbia law by filing a copy of the warrant for the search of an apartment and return with the Superior Court a day late did not require suppression of the evidence seized during the search. *United States v. Johnson*, 574 F.Supp.2d 154, 2008 U.S. Dist. LEXIS 67429 (2008).

Trial court's pretrial credibility finding, in favor of police officer who prepared search warrant application, at suppression hearing at which trial court found that such officer did not know of defendant's then-pending civil suit against two other officers and had not been directed by those officers to get a warrant to search defendant's home for drugs, could not be relied on by trial court when determining whether defendant made a proffer of witness bias that was sufficient to warrant bias cross-examination of officers who were present when search warrant was executed, which proffer involved the defense's theory that officers at scene when search warrant was executed were biased because of the civil suit or may have been improperly influenced by the two officers defendant was suing, one of whom was in the room when drugs were found on defendant and the other of whom was part of the search team. *Howard v. United States*, 978 A.2d 1202, 2009 D.C. App. LEXIS 367 (2009).

Time of execution.

Reasonable police officer could have believed that executing nighttime search without knocking did not violate Fourth Amendment, and thus officers who did execute such warrant

were entitled to qualified immunity in arrestees' § 1983 action, where there was probable cause to believe that person who was suspected of committing murder lived at residence being searched, officer had some reason to think that such person would be in possession of weapon listed in warrant, and officer had reasonable grounds to believe that such person was easily provoked to violence and that, once provoked, would not be inclined to back down. *Youngbey v. March*, 676 F.3d 1114, 2012 U.S. App. LEXIS 7630 (C.A.D.C. 2012).

Issue of whether police officers were entitled to qualified immunity in civil rights action under Fourth Amendment for planning and conducting 4:00 a.m. search on warrant that did not authorize nighttime search and breaking and entering into plaintiffs' home without knocking and announcing their presence turned on question of law, and thus Court of Appeals had jurisdiction to conduct de novo review of trial court's denial of qualified immunity as "final decision," since officers did not contest that they did not knock and announce before entering into plaintiffs' home and there was no dispute that officers executed search warrant during nighttime. *Youngbey v. March*, 676 F.3d 1114, 2012 U.S. App. LEXIS 7630 (C.A.D.C. 2012).

Under District of Columbia law, execution of search warrant during nighttime was authorized where both warrant in question and its underlying affidavit asserted belief that cocaine was being sold from named premises. D.C. Code 1981, §§ 23-521(f)(5), 33-565(h). *United States v. Burch*, 156 F.3d 1315, 1998 U.S. App. LEXIS 24913 (C.A.D.C. 1998), writ of certiorari denied by 526 U.S. 1011, 119 S. Ct. 1155, 143 L. Ed. 2d 220, 1999 U.S. LEXIS 1827, 67 U.S.L.W. 3560 (1999).

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. D.C. Code §§ 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(c, h); Fed.Rules Crim.Proc. rule 41(c); 21 U.S.C. § 879(a). *United States v. Gooding*, 477 F.2d 428, 1973 U.S. App. LEXIS 10913 (C.A.D.C. 1973), affirmed by 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (1974).

District of Columbia narcotics statute providing that "the judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night," qualifies District of Columbia statute permitting a

nighttime execution of the search warrant if, and only if, there is an express authorization therefore pursuant to statute; the latter statute is applicable to nonnarcotic cases only. D.C. Code §§ 23-521(f)(5), 23-522(c)(1), 23-523(b), 33-414(h). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

Where none of grounds set forth in District of Columbia Code for search warrant authorizing execution at night were included in either application or warrant, search made pursuant to warrant well after ending of daylight hours was invalid and evidence seized was subject to suppression, though warrant was issued in connection with alleged violations of federal narcotics laws. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-521(f)(5), 23-522(c)(1), 23-523(b), 33-414(h); Comprehensive Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41(d) *United States v. Gooding*, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Where affidavit in support of search warrant stated that automobile to be searched had specific District of Columbia license tag and was registered to a District resident with a known address and where alleged criminal activity described in affidavit was ongoing and officer who sought search warrant delayed six days after verifying ownership of car before applying for the warrant, it could not be reasonably inferred that a daytime execution of the warrant was impossible and in absence of showing that warrant could not be executed during the day or that stolen property which was allegedly in car was likely to be removed unless seized forthwith or would be in car only at certain times of day, allegations did not support issuance of nighttime search warrant. D.C. Code §§ 23-521, 23-521(f)(5), 23-522, 23-522(c). *Spence v. United States*, 370 A.2d 1351, 1977 D.C. App. LEXIS 435 (1977).

Where judge issuing warrant for nighttime search of juvenile's home must have known that search was to be executed at night, warrant authorized nighttime search on its face, and judge was orally informed that property sought was likely to be removed or destroyed if not seized forthwith, warrant was not defective because application for it did not contain, in writing, any of grounds for authorizing nighttime search. D.C. Code §§ 23-521(f)(5), 23-522, 23-522(a-c), (c)(2); Fed.Rules Crim.Proc. rules 41, 41(c); U.S. Const. Amend. 4. *Spence v. United States*, 370 A.2d 1351, 1977 D.C. App. LEXIS 435 (1977).

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which

was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or night-time execution was valid. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 22-1515(a), 22-3601, 23-501(1), 23-521 to 23-523,

23-521(f)(5), 23-522(c)(1), 33-402, 33-414(h), 33-416; Fed. Rules Crim. Proc. Rule 41(c). United States v. Thomas, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

§ 23-522. Applications for search warrants.

(a) Each application for a search warrant shall be made in writing, or by telephone or other appropriate means, including facsimile transmissions or other electronic communications, upon oath or affirmation to a judicial officer, pursuant to the Superior Court Rules of Criminal Procedure.

(b) Each application shall include —

(1) the name and title of the applicant;

(2) a statement that there is probable cause to believe that property of a kind or character described in section 23-521(d) is likely to be found in a designated premise, in a designated vehicle or object, or upon designated persons;

(3) allegations of fact supporting such statement; and

(4) a request that the judicial officer issue a search warrant directing a search for and seizure of the property in question.

The applicant may also submit depositions or affidavits of other persons containing allegations of fact supporting or tending to support those contained in the application.

(c) The application may also contain a request that the search warrant be made executable at any hour of the day or night upon the ground that there is probable cause to believe that (1) it cannot be executed during the hours of daylight, (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property sought is not likely to be found except at certain times or in certain circumstances. Any request made pursuant to this subsection must be accompanied and supported by allegations of fact supporting such request.

(July 29, 1970, 84 Stat. 615, Pub. L. 91-358, title II, § 210(a); Oct. 26, 1974, 88 Stat. 1455, Pub. L. 93-481, § 4(c); Oct. 17, 2002, D.C. Law 14-194, § 802, 49 DCR 5306.)

Cross references. — Alcoholic Beverage Control Act, search warrants, see § 25-803.

Businesses, examination of books and search of premises of certain businesses, see § 5-117.02.

Cruelty to animals, search warrants to prevent, see § 22-1005.

Gaming houses or bawdy houses, authorization of searches, see § 5-115.06.

Milk containers, search warrants to discover illegal use, see §§ 36-125 and 36-1555.

Pawned or pledged property, examination of property, see § 5-117.03.

Raids, prohibition of advance information of raids to attorneys or bondsmen, see § 23-1109.

Uniform Narcotic Drug Act, search warrants, see § 48-902.04.

Weights, Measures, and Markets, warrantless searches by Director, see § 37-201.24.

Section references. — This section is referred to in § 23-521.

Prior Codifications. — 1981 Ed., § 23-522. 1973 Ed., § 23-522.

Effect of amendments. — D.C. Law 14-194 rewrote subsec. (a) which had read as follows: “(a) Each application for a search warrant shall

be made in writing upon oath or affirmation to a judicial officer.”

Legislative history of Law 14-194. — For Law 14-194, see notes following § 23-113.

CASE NOTES

ANALYSIS

Challenge to affidavit.

Construction and application.

Multiple sovereignties.

—Authority to issue and execute, multiple sovereignties.

—In general.

Probable cause.

—Affidavits, probable cause.

—In general.

—Informants, probable cause.

Time of execution.

Challenge to affidavit.

To challenge search warrant affidavit successfully, defendant must meet, by a preponderance of the evidence, a four-prong test: (1) affidavit contained false statements, (2) false statements were made knowingly and intentionally or with a reckless disregard for the truth, (3) false statements were material to issue of probable cause, and (4) without false statements, affidavit is insufficient to establish probable cause; if defendant meets all four prongs, warrant must be voided and its fruits suppressed. *Jones v. United States*, 828 A.2d 169, 2003 D.C. App. LEXIS 434 (2003), writ of certiorari denied by 540 U.S. 1166, 124 S. Ct. 1182, 157 L. Ed. 2d 1214, 2004 U.S. LEXIS 915, 72 U.S.L.W. 3487 (2004).

Construction and application.

Federal Rules of Criminal Procedure governing service of federal search warrants is not applicable to searches governed by more specific narcotic search statutes. Fed.Rules Crim.Proc. rule 41; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405. *Gooding v. United States*, 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (U.S. Dist. Col. 1974).

General provision relating to search warrants found in the District of Columbia Code and then incorporated in similar form into the new Superior Court Rules was intended to be a counterpart to comparable Federal Rules of Criminal Procedure. D.C. Code § 23-521 et seq.; Fed.Rules Crim.Proc. rule 41, 18 U.S.C. *Gooding v. United States*, 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (U.S. Dist. Col. 1974).

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. Comprehensive Drug Abuse Prevention and Control Act of

1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(h); Fed.Rules Crim.Proc. rule 41(c). *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Multiple sovereignties.

— Authority to issue and execute, multiple sovereignties.

Even though officers preparing search warrants cited inapplicable statutes in support of issuance of warrant, search warrant signed by Superior Court judge was nevertheless effective since judge clearly had authority to authorize search warrant. D.C. Code 1981, § 33-565. *United States v. Bright*, 563 F. Supp. 354, 1982 U.S. Dist. LEXIS 10131 (1982).

Arrest and search warrants were not invalid merely because an Assistant United States attorney had given his approval to the complainants to secure the warrants. Fed.Rules Crim.Proc. rules 3, 4, 41; 18 U.S.C. § 3045. *U.S. v. Purgitt*, 176 F.Supp. 557, 1959 U.S. Dist. LEXIS 2822 (D.D.C.1959).

In determining whether to suppress narcotics evidence seized pursuant to search warrant, which was later found to be invalid insofar as it was issued to and executed by United States park police officers who were not statutorily authorized to apply for or execute search warrants issued pursuant to local narcotics law, “objectively reasonable” standard would be applied; evidentiary hearing was required to determine whether United States park police officers’ reliance on warrant, which was issued to them in violation of express terms of statute, was “objectively reasonable.” D.C. Code 1981, § 33-565. *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

In the future, any reliance on warrant issued to United States park police pursuant to local narcotics law, which by its express terms does not permit issuance to or execution by park police, will not be “objectively reasonable.” D.C. Code 1981, § 33-565(e). *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

United States park police officers cannot properly be issued search warrants pursuant to local narcotics law; plain language of local law, reinforced by scant legislative history, provides that search warrants can be issued only to chief of police of district or members of metropolitan police department. D.C. Code 1981, § 33-

565(e). *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

Although application for search warrant issued to United States park police did not state whether warrant was applied for under federal or local law, warrant was issued under local law, even though applicants were federal officers, in light of evidence that application for warrant was filed in superior court, not federal court; warrant directed executing officers to file copy of warrant and return with superior court, not with federal magistrate as required by federal law; warrant was returned to issuing judge in superior court, not to federal magistrate; and defendant, whose premises were searched pursuant to warrant, was charged only under local law. D.C. Code 1981, § 33-565; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509, 21 U.S.C. § 879; Fed.R.Cr.Proc. Rule 41(a). *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

— In general.

Operative facts surrounding search for narcotics indicated that standards for issuance of search warrant were governed by federal statute rather than local laws of District of Columbia, where, *inter alia*, a United States attorney filed warrant application with a federal magistrate, alleging violations of United States Code for which defendant was later indicted, and neither application nor supporting affidavits contained any mention of local narcotics laws; failure of Congress to include in federal statute a special provision authorizing District of Columbia police officers to obtain search warrants for investigating federal offenses could not be taken as a deliberate exclusion in view of the overall statutory framework. D.C. Code § 23-521 *et seq.*; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41, 18 U.S.C. *Gooding v. United States*, 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (U.S. Dist. Col. 1974).

Statute of the District of Columbia dealing with issuance of search warrants on complaint under oath need not be complied with when Federal Rule of Criminal Procedure dealing with search and seizure has been complied with. D.C. Code 1951, § 23-301; Fed.Rules Crim.Proc. rule 41, 18 U.S.C. *Shay v. U.S.*, 212 F.2d 809, 1954 U.S. App. LEXIS 3448 (C.A.D.C. 1954).

Search warrant, which had been executed in accordance with Federal Rules of Criminal Procedure, was valid even though it did not comply with District of Columbia statute authorizing issuance of search warrants. Fed.Rules Crim.Proc. rule 41(c); D.C. Code 1951, § 23-

301. *Ledbetter v. U.S.*, 211 F.2d 628, 1953 U.S. App. LEXIS 2713 (C.A.D.C. 1953).

Probable cause.

— Affidavits, probable cause.

Warrants not supported by written sworn declaration void. *U.S. v. Keleher*, 2 F.2d 934, 1924 U.S. App. LEXIS 2198 (1924).

Courts should be extremely cautious in allowing a finding of probable cause for search warrant to be made based on information outside the affidavit and of which the judicial officer is only presumed to know, especially where that information is critical to such a determination. U.S. Const. Amend. 4. *United States v. Huggins*, 733 F. Supp. 445, 1990 U.S. Dist. LEXIS 3539 (1990).

Affidavits in support of search warrant are to be read in their entirety. *United States v. Kuch*, 301 F. Supp. 961, 1968 U.S. Dist. LEXIS 9648 (D.D.C.1968).

A search warrant was not insufficient on its face even though issued on the basis of a joint affidavit signed by three police officers where affidavit specified with clarity which items of information were known by each of the affiants. *U.S. v. Castle*, 213 F.Supp. 56, 1962 U.S. Dist. LEXIS 3283 (D.D.C.1962).

The commissioner is not required to personally type up affidavit upon which search warrant is based, and the investigating police officers can prepare the affidavit, and if the complaint is dated, signed and sworn to by one of the complainants and the commissioner is satisfied that sworn statements constitute sufficient basis for the issue of the warrant, the requirements of Federal Rules of Criminal Procedure have been fulfilled. Fed.Rules Crim.Proc. rules 3, 4, 18 U.S.C. *U.S. v. Purgitt*, 176 F.Supp. 557, 1959 U.S. Dist. LEXIS 2822 (D.D.C.1959).

Affidavit for search warrant need not state all facts and circumstances known to officers, but need only set forth sufficient facts in short and concise manner to establish probable cause. *U.S. v. Bell*, 17 F.R.D. 13, 1955 U.S. Dist. LEXIS 4033 (D.D.C.1955).

Although a prosecutor may not vouch for the truthfulness of every third party statement reported by the officer in the affidavit supporting a search or arrest warrant by approving the warrant application, the prosecutor certainly endorses the officer's conclusion that probable cause exists to believe that the crime described in the affidavit was committed. *Harris v. United States*, 834 A.2d 106, 2003 D.C. App. LEXIS 623 (2003).

A court assumes that prosecutors will not give their approval to search or arrest warrant affidavits and applications lightly, and a court presumes that prosecutors are aware of the significance of truthful affidavits and the grav-

ity of the interests to be invaded. *Harris v. United States*, 834 A.2d 106, 2003 D.C. App. LEXIS 623 (2003).

The ability of a magistrate to evaluate the existence of probable cause to support issuance a search or arrest warrant depends upon the integrity of the supporting affidavit, which should only contain information that is believed or appropriately accepted by the affiant as true. *Harris v. United States*, 834 A.2d 106, 2003 D.C. App. LEXIS 623 (2003).

An affidavit submitted in support of a search or arrest warrant implicates fundamental constitutional rights. *Harris v. United States*, 834 A.2d 106, 2003 D.C. App. LEXIS 623 (2003).

Probable cause for issuance of search warrant to take blood sample from defendant was established by statements in supporting affidavit that homicide victim was murdered by strangulation, that defendant was a co-worker of victim and lived short distance away from her apartment, that witnesses identified potential suspect as a "stocky" man who called victim's first name at front door of apartment building, and that defendant had been arrested on two prior occasions for similar crimes, i.e., an assault and a murder in which both victims were choked. *Jones v. United States*, 828 A.2d 169, 2003 D.C. App. LEXIS 434 (2003), writ of certiorari denied by 540 U.S. 1166, 124 S. Ct. 1182, 157 L. Ed. 2d 1214, 2004 U.S. LEXIS 915, 72 U.S.L.W. 3487 (2004).

— In general.

Affiant seeking a search warrant and issuing magistrate had some latitude in interpretation of evidence before them, and evidence may support warrant even though later held insufficient to support conviction. *United States v. Bast*, 495 F.2d 138, 1974 U.S. App. LEXIS 10396 (C.A.D.C. 1974).

Affidavits in support of warrant applications are to be given a commonsense reading. *U.S. Const. Amend. 4. United States v. Watson*, 551 F. Supp. 1123, 1982 U.S. Dist. LEXIS 16884 (1982).

The deep meaning of an oath to tell the truth permits magistrates to rely on an officer's good faith in reporting facts when determining whether the facts support probable cause for issuance of a search or arrest warrant. *Harris v. United States*, 834 A.2d 106, 2003 D.C. App. LEXIS 623 (2003).

An oath or affirmation in support of a search or arrest warrant reminds both the investigator seeking the warrant and the magistrate issuing it of the importance and solemnity of the process involved. *Harris v. United States*, 834 A.2d 106, 2003 D.C. App. LEXIS 623 (2003).

The warrant clause of the Fourth Amendment encourages careful reflection by officers by requiring search and arrest warrant applications to be supported by oath or affirmation;

gravity of an oath or affirmation is an essential aid to truth in the fact-seeking process. *Harris v. United States*, 834 A.2d 106, 2003 D.C. App. LEXIS 623 (2003).

A court trusts that police officers will reflect carefully before asking a magistrate to find probable cause to invade interests protected by the Fourth Amendment by issuing a search or arrest warrant. *Harris v. United States*, 834 A.2d 106, 2003 D.C. App. LEXIS 623 (2003).

Determination of whether there was an adequate showing of probable cause to support a search warrant must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. *Tyler v. United States*, 298 A.2d 224, 1972 D.C. App. LEXIS 310 (1972).

Observations of fellow officers of government engaged in a common investigation are a reliable basis for a search warrant applied for by one of their number. *Tyler v. United States*, 298 A.2d 224, 1972 D.C. App. LEXIS 310 (1972).

Alleged fact that there was no evidence to show that person from whom undercover agent purchased heroin obtained the heroin from within defendant's residence because such person was not searched by undercover agent prior to his entry did not render affidavit in support of search warrant inadequate, where affidavit demonstrated that agent's covert status was unknown to person from whom he purchased the heroin and therefore he was in no position to search such person without compromising his status, and there was no reason to assume false dealings. *Tyler v. United States*, 298 A.2d 224, 1972 D.C. App. LEXIS 310 (1972).

— Informants, probable cause.

In determining whether probable cause exists for magistrate to issue search warrant, so long as magistrate is sufficiently informed of underlying circumstances which justify belief in informer's reliability and underlying circumstances upon which informer concluded that contraband was where he claimed it was, informer's allegations require no independent corroboration. *U.S. Const. Amend. 4. Jones v. United States*, 336 A.2d 535, 1975 D.C. App. LEXIS 364 (1975), writ of certiorari denied by 423 U.S. 997, 96 S. Ct. 427, 46 L. Ed. 2d 372, 1975 U.S. LEXIS 3516 (1975).

Affidavit, which, inter alia, stated that attesting officer watched front door of apartment building, a multistoried structure with many units, after giving informant money to purchase narcotics from defendant rather than watching defendant's door did not, on theory that officer could not attest to informant's entry into defendant's apartment, thereby render search warrant based on such affidavit invalid. *U.S. Const. Amend. 4. Jones v. United States*, 336 A.2d 535, 1975 D.C. App. LEXIS 364 (1975), writ of certiorari denied by 423 U.S.

997, 96 S. Ct. 427, 46 L. Ed. 2d 372, 1975 U.S. LEXIS 3516 (1975).

There was no need to demonstrate, in affidavit in support of a search warrant, reliability of informant who merely aided in initial contact with person from whom agent purchased heroin, where thereafter investigation proceeded independently, and since affidavit contained observations of agent accompanying such person to address respecting a purchase of heroin and presence of heroin in premises, affidavit reflected sufficient probable cause to issue search warrant. *Tyler v. United States*, 298 A.2d 224, 1972 D.C. App. LEXIS 310 (1972).

Time of execution.

Federal statute relating to searches for "controlled substances" and providing that a warrant may be served at any time of the day or night as long as the issuing authority is satisfied that probable cause exists to believe that there are grounds for the warrant "and for its service at such time" requires no special showing for a nighttime search, other than a showing that the contraband is likely to be on the property or person to be searched at that time. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a). *Gooding v. United States*, 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (U.S. Dist. Col. 1974).

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. D.C. Code §§ 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(c, h); Fed. Rules Crim. Proc. rule 41(c); 21 U.S.C. § 879(a). *United States v. Gooding*, 477 F.2d 428, 1973 U.S. App. LEXIS 10913 (C.A.D.C. 1973), affirmed by 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (1974).

Under District of Columbia law, residents' negligence per se claim based on police officers' violation of statute prohibiting nighttime searches absent specific authorization was not barred by fact that residents also asserted intentional tort claims against officers, where claim alleged negligence on officers' part in executing and planning search, and that conduct was separate from conduct, such as pointing firearms, upon which residents based their allegations of intentional torts. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by,

remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

Under District of Columbia law, police officers' nighttime search of residence was unauthorized, and thus officers' entry into residence did not constitute defense to residents' trespass claim, where search warrant did not explicitly authorize nighttime search, and search warrant affidavit did not request or establish probable cause for nighttime search. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

Under District of Columbia law, search warrant did not authorize nighttime search, and thus officers' planning and execution of nighttime search of residence violated Fourth Amendment, where preprinted search warrant did not strike out "daytime" or "any time of the day or night" designations, and search warrant affidavit did not request or provide any evidence justifying nighttime search. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

District of Columbia narcotics statute providing that "the judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night," qualifies District of Columbia statute permitting a nighttime execution of the search warrant if, and only if, there is an express authorization therefore pursuant to statute; the latter statute is applicable to nonnarcotic cases only. D.C. Code §§ 23-521(f)(5), 23-522(c)(1), 23-523(b), 33-414(h). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

Where none of grounds set forth in District of Columbia Code for search warrant authorizing execution at night were included in either application or warrant, search made pursuant to warrant well after ending of daylight hours was invalid and evidence seized was subject to suppression, though warrant was issued in connection with alleged violations of federal narcotics laws. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-521(f)(5), 23-522(c)(1), 23-523(b), 33-414(h); Comprehensive Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed. Rules Crim. Proc. rule 41(d). *United States v. Gooding*, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Where affidavit in support of search warrant stated that automobile to be searched had specific District of Columbia license tag and was registered to a District resident with a known address and where alleged criminal activity described in affidavit was ongoing and officer

who sought search warrant delayed six days after verifying ownership of car before applying for the warrant, it could not be reasonably inferred that a daytime execution of the warrant was impossible and in absence of showing that warrant could not be executed during the day or that stolen property which was allegedly in car was likely to be removed unless seized forthwith or would be in car only at certain times of day, allegations did not support issuance of nighttime search warrant. D.C. Code §§ 23-521, 23-521(f)(5), 23-522, 23-522(c). *Spence v. United States*, 370 A.2d 1351, 1977 D.C. App. LEXIS 435 (1977).

Where judge issuing warrant for nighttime search of juvenile's home must have known that search was to be executed at night, warrant authorized nighttime search on its face, and judge was orally informed that property sought was likely to be removed or destroyed if not seized forthwith, warrant was not defective because application for it did not contain, in writing, any of grounds for authorizing nighttime search. D.C. Code §§ 23-521(f)(5), 23-522,

23-522(a-c), (c)(2); Fed.Rules Crim.Proc. rules 41, 41(c); U.S. Const. Amend. 4. *Spence v. United States*, 370 A.2d 1351, 1977 D.C. App. LEXIS 435 (1977).

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 22-1515(a), 22-3601, 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-402, 33-414(h), 33-416; Fed.Rules Crim.Proc. rule 41(c). *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

§ 23-523. Time of execution of search warrants.

(a) A search warrant shall not be executed more than ten days after the date of issuance and shall be returned to the court after its execution or expiration in accordance with section 23-521(f)(6).

(b) A search warrant may be executed on any day of the week and, in the absence of express authorization in the warrant pursuant to section 23-521(f)(5), shall be executed only during the hours of daylight. For the purposes of this subsection, the term "hours of daylight" means between 6:00 a.m. and 9:00 p.m.

(June 3, 1997, D.C. Law 11-275, § 14(b), 44 DCR 1408; Dec. 10, 2009, D.C. Law 18-88, § 221, 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 23-523. 1973 Ed., § 23-523.

Effect of amendments. — D.C. Law 18-88, in subsec. (b), added the second sentence.

Emergency legislation. — For temporary (90 day) amendment of section, see § 221 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 221 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 23-110.

CASE NOTES

ANALYSIS

Construction and application.**Multiple sovereignties.**

—Authority to issue and execute, multiple sovereignties.

—In general.

Time of execution.

—Delay, time of execution.

—Forthwith search, time of execution.

—In general.

—Night, time of execution.

Construction and application.

Federal Rules of Criminal Procedure governing service of federal search warrants is not applicable to searches governed by more specific narcotic search statutes. Fed.Rules Crim.Proc. rule 41; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405. *Gooding v. United States*, 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (U.S. Dist. Col. 1974).

General provisions governing service of warrants are displaced in the face of a specific statutory regime for an articulated class of offenses. Fed.R.Cr.Proc. Rule 41. *United States v. Burch*, 156 F.3d 1315, 1998 U.S. App. LEXIS 24913 (C.A.D.C. 1998), writ of certiorari denied by 526 U.S. 1011, 119 S. Ct. 1155, 143 L. Ed. 2d 220, 1999 U.S. LEXIS 1827, 67 U.S.L.W. 3560 (1999).

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(h); Fed.Rules Crim.Proc. rule 41(c). *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Multiple sovereignties.**— Authority to issue and execute, multiple sovereignties.**

In the future, any reliance on warrant issued to United States park police pursuant to local narcotics law, which by its express terms does not permit issuance to or execution by park police, will not be "objectively reasonable." D.C. Code 1981, § 33-565(e). *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

In determining whether to suppress narcotic evidence seized pursuant to search warrant, which was later found to be invalid insofar as it

was issued to and executed by United States park police officers who were not statutorily authorized to apply for or execute search warrants issued pursuant to local narcotics law, "objectively reasonable" standard would be applied; evidentiary hearing was required to determine whether United States park police officers' reliance on warrant, which was issued to them in violation of express terms of statute, was "objectively reasonable." D.C. Code 1981, § 33-565. *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

— In general.

District of Columbia Code warrant provisions are not inapplicable to warrants issued in connection with federal offenses. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-501, 23-521(f)(5), 23-522(c)(1), 23-523(b), 23-1322, 33-414(h); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41(d). *United States v. Gooding*, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Time of execution.**— Delay, time of execution.**

Search warrant for house was not invalid on ground that facts supporting probable cause for immediate search had become stale by time warrant was executed, where warrant was executed within ten-day statutory period and it was entirely reasonable for police to assume that in absence of interdiction, house would continue to serve as fixed and secure location for drug sales. U.S. Const. Amend. 4; Fed.R.Cr.Proc. Rule 41(c)(1). *United States v. Allen*, 960 F.2d 1055, 1992 U.S. App. LEXIS 6153 (C.A.D.C. 1992), writ of certiorari denied by 506 U.S. 881, 113 S. Ct. 231, 121 L. Ed. 2d 167, 1992 U.S. LEXIS 5964, 61 U.S.L.W. 3262 (1992).

As respects question of timeliness of execution of search warrant, search reasonably referable to a contemporaneous violation of law is necessary. Fed.Rules Crim.Proc. rule 41(c, d). *House v. United States*, 411 F.2d 725, 1969 U.S. App. LEXIS 12933 (C.A.D.C. 1969), writ of certiorari denied by 399 U.S. 915, 90 S. Ct. 2220, 26 L. Ed. 2d 574, 1970 U.S. LEXIS 1490 (1970).

In absence of showing of prejudice, delay of one and one-half days between issuance of warrant and its execution did not invalidate search. Fed.Rules Crim.Proc., rule 41(d). *United States v. Kuch*, 301 F. Supp. 965, 1968 U.S. Dist. LEXIS 11733 (D.D.C.1968).

Search of house executed five days after warrant was issued was not untimely; statute allows a search warrant to be served up to ten days after issuance, there had been long-standing complaints to police about activities in house, and man who came out of house and spotted police reinforced judicial officer's determination of timeliness. D.C. Code 1981, § 33-565(i); U.S. Const. Amend. 4. *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

Where warrant authorized search of delicatessen within ten days of date of issuance of warrant for gambling paraphernalia, fact that police permitted eight days to elapse before executing the warrant after receiving tip from informant that people were inside that had numbers slips on them did not render search unlawful. D.C. Code § 23-523(a); D.C. Code SCR, Criminal Rule 41(e)(1); U.S. Const. Amend. 4. *United States v. Graves*, 315 A.2d 559, 1974 D.C. App. LEXIS 369 (1974).

Even an unreasonable time lag in execution of search warrant must prejudice defendant to render search invalid. D.C. Code § 33-414(e, i). *Curtis v. United States*, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

Defendant failed to show that eight-day delay in executing search warrant after it was issued had prejudiced him. D.C. Code § 33-414(e, i). *Curtis v. United States*, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

Inasmuch as no prejudice to defendant was claimed by reason of failure to execute search warrant until six days after its issuance, such delay did not vitiate the warrant and did not require suppression of evidence obtained pursuant to warrant. D.C. Code § 33-414(e, i). *Johnson v. United States*, 255 A.2d 494, 1969 D.C. App. LEXIS 279 (App. 1969).

— Forthwith search, time of execution.

Though outer limits of period within which search warrant may validly be executed and returned are delineated in rule providing that warrant may be executed and returned only within ten days after its date, and though "forthwith" command in other rule providing that warrant shall command officer to search forthwith the person or place named for property specified means something in point of time, there is no automatic touchstone by which to test sufficiency of compliance with "forthwith" command. Fed. Rules Crim. Proc. rule 41(c, d). *House v. United States*, 411 F.2d 725, 1969 U.S. App. LEXIS 12933 (C.A.D.C. 1969), writ of certiorari denied by 399 U.S. 915, 90 S. Ct. 2220, 26 L. Ed. 2d 574, 1970 U.S. LEXIS 1490 (1970).

While the federal rule provides that a search warrant shall command the officer to search "forthwith" the person or place named and that the warrant may be executed and returned only

within 10 days after its date, the federal rule defines the word "forthwith" by limiting the time of search to ten days after the issuance of the warrant. Fed. Rules Crim. Proc. rule 41(c, d). *Mitchell v. U.S.*, 258 F.2d 435, 1958 U.S. App. LEXIS 4641 (C.A.D.C. 1958).

Where search warrant was issued on February 12 but was not executed until February 17, the search warrant was not invalid as not executed "forthwith" within the federal rule. Fed. Rules Crim. Proc. rule 41(c, d). *Mitchell v. U.S.*, 258 F.2d 435, 1958 U.S. App. LEXIS 4641 (C.A.D.C. 1958).

Requirement that search warrant command search "forthwith" is to insure that probable cause existing when warrant issued also exists when it is executed. D.C. Code § 33-414(e, i). *Curtis v. United States*, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

Under District of Columbia Code providing that warrant command the search "forthwith" and that warrant must be executed within 10 days after its date, delay within 10-day limitation does not, standing alone, vitiate warrant. D.C. Code § 33-414(e, i). *Johnson v. United States*, 255 A.2d 494, 1969 D.C. App. LEXIS 279 (App. 1969).

— In general.

Police officer's failure to cross out "daytime" clause of search warrant which authorized search "in the daytime/at any time of the day or night" did not render warrant invalid, as legal standard for evaluating validity of search did not contain time restriction, officer acted in good faith, and officer's conduct was objectively reasonable. *United States v. Burch*, 156 F.3d 1315, 1998 U.S. App. LEXIS 24913 (C.A.D.C. 1998), writ of certiorari denied by 526 U.S. 1011, 119 S. Ct. 1155, 143 L. Ed. 2d 220, 1999 U.S. LEXIS 1827, 67 U.S.L.W. 3560 (1999).

District of Columbia statute providing that search warrant, absent express authorization in warrant pursuant to statute, should be executed only during hours of daylight is, as special or local statute, qualification upon prior general federal statute providing that search warrant relating to offenses involving controlled substances may be served at any time of day or night if judge or United States magistrate is satisfied that there is probable cause to believe that grounds exist for warrant and its service at such time. D.C. Code § 23-523(b); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a). *United States v. Gooding*, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Issuance of warrant signifies that judicial officer has made determination that there are reasonable grounds to believe that the information underlying the warrant is true and is of

sufficient reliability and timeliness to justify a search for up to ten days. U.S.C. Const.Amend. 4; D.C. Code 1981, § 33-565(i). *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

— Night, time of execution.

Federal statute relating to searches for “controlled substances” and providing that a warrant may be served at any time of the day or night as long as the issuing authority is satisfied that probable cause exists to believe that there are grounds for the warrant “and for its service at such time” requires no special showing for a nighttime search, other than a showing that the contraband is likely to be on the property or person to be searched at that time. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a). *Gooding v. United States*, 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (U.S. Dist. Col. 1974).

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. D.C. Code §§ 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(c, h); Fed. Rules Crim. Proc. rule 41(c); 21 U.S.C. § 879(a). *United States v. Gooding*, 477 F.2d 428, 1973 U.S. App. LEXIS 10913 (C.A.D.C. 1973), affirmed by 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (1974).

Under District of Columbia law, search warrant did not authorize nighttime search, and thus officers’ planning and execution of nighttime search of residence violated Fourth Amendment, where preprinted search warrant did not strike out “daytime” or “any time of the day or night” designations, and search warrant affidavit did not request or provide any evidence justifying nighttime search. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

It was objectively unreasonable for District of Columbia police officers to rely upon search warrant in executing nighttime search of residence, and thus officers were not entitled to qualified immunity from liability in § 1983 action, where District of Columbia law specifically prohibited nighttime searches unless expressly authorized, search warrant did not explicitly authorize nighttime search, and search warrant affidavit did not request or establish

probable cause for nighttime search. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

Under District of Columbia law, police officers’ nighttime search of residence was unauthorized, and thus officers’ entry into residence did not constitute defense to residents’ trespass claim, where search warrant did not explicitly authorize nighttime search, and search warrant affidavit did not request or establish probable cause for nighttime search. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

Under District of Columbia law, residents of house that was improperly subjected to nighttime search belonged to class protected by statute prohibiting nighttime searches without specific authorization, and thus stated negligence per se claims against police officers who allegedly violated statute. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

Under District of Columbia law, residents’ negligence per se claim based on police officers’ violation of statute prohibiting nighttime searches absent specific authorization was not barred by fact that residents also asserted intentional tort claims against officers, where claim alleged negligence on officers’ part in executing and planning search, and that conduct was separate from conduct, such as pointing firearms, upon which residents based their allegations of intentional torts. *Youngbey v. District of Columbia*, 766 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 19748 (2011), reversed by, remanded by 676 F.3d 1114, 400 U.S. App. D.C. 177, 2012 U.S. App. LEXIS 7630 (2012).

Search warrant and its execution during the nighttime hours was proper in narcotics case where there was a showing of probable cause both as to its existence for its service at such time, and where it was accompanied by a supporting affidavit as well as by an insertion within the warrant as to when it could be served. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-523(b), 33-414(h). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

Warrant which meets the “positivity” requirements of rule relating to issuance and contents of a warrant, or in narcotics cases the requirements of statute providing, inter alia, that search warrant in such cases may be served at any time of the day or night if judge or magistrate is satisfied that there is probable cause to believe grounds exist for the warrant and for its

service at such time, satisfies the requirements necessary for its execution in the nighttime. Fed.Rules Crim.Proc. rule 41(c); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

District of Columbia narcotics statute providing that "the judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night.", qualifies District of Columbia statute permitting a nighttime execution of the search warrant if, and only if, there is an express authorization therefore pursuant to statute; the latter statute is applicable to nonnarcotic cases only. D.C. Code §§ 23-521(f)(5), 23-522(c)(1), 23-523(b), 33-414(h). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

Where none of grounds set forth in District of Columbia Code for search warrant authorizing execution at night were included in either application or warrant, search made pursuant to warrant well after ending of daylight hours was invalid and evidence seized was subject to suppression, though warrant was issued in connection with alleged violations of federal narcotics laws. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-521(f)(5), 23-522(c)(1), 23-523(b), 33-414(h); Comprehensive Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41(d). *United States v. Gooding*, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Warrant specifically authorizing search at any time of the day or night was not invalid on its face because it authorized a nighttime search and was based upon an affidavit which asserted that affiants had reason to believe instead of positive knowledge that property sought was on the premises, where warrant was issued under narcotics search statute on basis of an affidavit by two detectives that they had reason to believe that narcotics paraphernalia were being concealed on premises specified, and was not issued on basis of rule of criminal procedure pertaining to issuance of search warrants. Fed.Rules Crim.Proc. rule 41(c); 18 U.S.C. § 1405. *U.S. v. Castle*, 213 F.Supp. 52, 1962 U.S. Dist. LEXIS 3282 (D.D.C.1962).

Within rule requiring that a search warrant be served in daytime, unless affidavits are positive the property is on person or in place to be searched, it is sufficient that the search begin in the daytime, although it continue after dark. Fed.Rules Crim.Proc. rule 41(c). *U.S. v. Bell*, 126 F.Supp. 612, 1955 U.S. Dist. LEXIS 3819 (D.D.C.1955).

Where affidavit in support of search warrant stated that automobile to be searched had specific District of Columbia license tag and was registered to a District resident with a known address and where alleged criminal activity described in affidavit was ongoing and officer who sought search warrant delayed six days after verifying ownership of car before applying for the warrant, it could not be reasonably inferred that a daytime execution of the warrant was impossible and in absence of showing that warrant could not be executed during the day or that stolen property which was allegedly in car was likely to be removed unless seized forthwith or would be in car only at certain times of day, allegations did not support issuance of nighttime search warrant. D.C. Code §§ 23-521, 23-521(f)(5), 23-522, 23-522(c). *Spence v. United States*, 370 A.2d 1351, 1977 D.C. App. LEXIS 435 (1977).

Where judge issuing warrant for nighttime search of juvenile's home must have known that search was to be executed at night, warrant authorized nighttime search on its face, and judge was orally informed that property sought was likely to be removed or destroyed if not seized forthwith, warrant was not defective because application for it did not contain, in writing, any of grounds for authorizing nighttime search. D.C. Code §§ 23-521(f)(5), 23-522, 23-522(a-c), (c)(2); Fed.Rules Crim.Proc. rules 41, 41(c); U.S. Const. Amend. 4. *Spence v. United States*, 370 A.2d 1351, 1977 D.C. App. LEXIS 435 (1977).

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 22-1515(a), 22-3601, 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-402, 33-414(h), 33-416; Fed.Rules Crim.Proc. rule 41(c). *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Search conducted at ten o'clock in the morning and three days after issuance of warrant authorizing search of defendant's apartment at any time during the day or night may not have strictly complied with criminal rule that "the warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time.", but error constituted only

technical defect and there was no unreasonable action on part of the government prejudicing constitutionally protected rights where magistrate's finding of probable cause had clear sup-

port from affidavit. Fed.Rules Crim.Proc. rule 41(c). *United States v. Scott*, 269 A.2d 444, 1970 D.C. App. LEXIS 345 (App. 1970).

§ 23-524. Execution of search warrants.

(a) An officer executing a warrant directing a search of a dwelling house or other building or a vehicle shall execute such warrant in accordance with section 3109 of Title 18, United States Code.

(b) An officer executing a warrant directing a search of a person shall give, or make reasonable effort to give, notice of his identity and purpose to the person, and, if such person thereafter resists or refuses to permit the search, such person shall be subject to arrest by such officer pursuant to section 23-581(a) for violation of section 432 of the Revised Statutes of the United States relating to the District of Columbia (D.C. Official Code, sec. 22-405) (resisting a police officer) or other applicable provision of law.

(c)(1) An officer or agent executing a search warrant shall write and subscribe an inventory setting forth the time of the execution of the search warrant and the property seized under it.

(2) If the search is of a person, a copy of the warrant and of the return shall be given to that person.

(3) If the search is of a place, vehicle, or object, a copy of the warrant and of the return shall be given to the owner thereof if he is present, or if he is not, to an occupant, custodian, or other person present; or if no person is present, the officer shall post a copy of the warrant and of the return upon the premises, vehicle, or object searched.

(d) A copy of the warrant shall be filed with the court whose judge or magistrate authorized its issuance on the next court day after its execution, together with a copy of the return.

(e) An officer or agent executing a search warrant may seize any property discovered in the course of the lawful execution of such warrant if he has probable cause to believe that such property is subject to seizure under section 23-521(d), even if the property is not enumerated in the warrant or the application therefor, and no additional warrant shall be required to authorize such seizure, if the property is fully set forth in the return. Such seizure may include taking physical or other impressions or performing chemical, scientific, or other tests or experiments.

(f) An officer or agent executing a search warrant may take photographs and measurements during the execution.

(g) An officer executing a warrant directing a search of premises or a vehicle may search any person therein (1) to the extent reasonably necessary to protect himself or others from the use of any weapon which may be concealed upon the person, or (2) to the extent reasonably necessary to find property enumerated in the warrant which may be concealed upon the person.

(July 29, 1970, 84 Stat. 615, Pub. L. 91-358, title II, § 210(a); Oct. 26, 1974, 88 Stat. 1456, Pub. L. 93-481, § 4(d).)

Cross references. — Execution of warrants by police force, see § 5-127.05.

Search warrants in narcotic drug cases, see § 48-902.04.

Prior Codifications. — 1981 Ed., § 23-524. 1973 Ed., § 23-524.

CASE NOTES

ANALYSIS

Curative admissibility.

Entry.

—Constructive refusal of entry.

—Exigent circumstances, entry.

—In general.

—Ruse, entry.

Exclusionary rule.

Incidental search of premises.

Incidental searches of persons.

Multiple sovereignties.

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Review.

Standing to challenge search.

Curative admissibility.

Under doctrine of curative admissibility, after defendant elicited the fact, on cross-examination of police sergeant, that police department had conducted an internal investigation of earlier incident during which defendant's arm had been broken during execution of a search warrant by two officers who were also involved in a subsequent search which allegedly led to discovery of drugs in defendant's pocket and on the floor near defendant, government could respond by eliciting testimony on redirect examination clarifying that the police department routinely conducted internal investigations when force was used by its officers, that sergeant was not fearful of being implicated in any wrongdoing, and that the internal investigation regarding the earlier search ultimately found that use of force was justified. *Howard v. United States*, 978 A.2d 1202, 2009 D.C. App. LEXIS 367 (2009).

Entry.

— Constructive refusal of entry.

Police did not violate knock-and-announce statute by forcibly entering defendant's apartment to execute warrant to search for weapons, as circumstances allowed police to infer that defendant constructively refused entry, even though police waited only 15 seconds to enter after making full announcement of their purpose; in the preceding 30 seconds, defendant learned that a police officer whom he knew personally was requesting entry, where officer knocked three times in that period and announced himself in a loud voice. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

In considering a claim of constructive refusal, as justification for forced entry in order to execute search warrant under knock-and-announce statute, the courts engage in a highly contextual analysis, examining all the circumstances of the case, to determine whether the police inference was reasonable. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

When police are seeking entry under the knock-and-announce statute in order to execute a search warrant, a significant time lapse is required to justify a conclusion that admittance was refused. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

When police seek entry under the knock-and-announce statute in order to execute a search warrant, size of the premises to be searched is a relevant factor in determining whether the time that elapsed after the announcement was sufficient for police to conclude that entry was refused. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

The concept of constructive refusal, as exception to the "knock and announce" statute that requires the police to provide notice before entering a home to execute a search warrant, provides that if the police can reasonably infer from the actions or inactions of the occupants that they have been refused admission, the police may enter without waiting for an actual reply. U.S. Const. Amend. 4; D.C. Code 1981, § 23-524(a). *Moore v. United States*, 748 A.2d 915, 2000 D.C. App. LEXIS 37 (2000).

A ten-second delay between police announcement and forced entry into home to execute search warrant was too short for police to have reasonably concluded that they were constructively refused admittance for purposes of knock and announce statute. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

— Exigent circumstances, entry.

Officer's warrantless entry into defendant's residence, following which defendant pointed a long gun at officer and officer withdrew, was reasonable pursuant to the emergency aid exception to the Fourth Amendment's warrant requirement; when officers arrived at residence

in response to a complaint of a disturbance, they found a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside, officers noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house, through a window the officers could see defendant inside the house, screaming and throwing things, they saw that defendant had a cut on his hand, and they asked him whether he needed medical attention, but defendant ignored these questions and demanded, with accompanying profanity, that the officers go to get a search warrant. *Michigan v. Fisher*, 558 U.S. 45, 130 S. Ct. 546, 175 L. Ed. 2d 410, 2009 U.S. LEXIS 8773 (2009).

Danger to an officer can constitute exigent circumstances sufficient to excuse compliance with the knock-and-announce requirement entirely, an information pertaining to potential danger facing the officers upon their announcement and entry can also be relevant in determining when the officers reasonably inferred constructive refusal of admittance. *Atchison v. United States*, 982 A.2d 1138, 2009 D.C. App. LEXIS 543 (2009), writ of certiorari denied by 130 S. Ct. 1549, 176 L. Ed. 2d 140, 2010 U.S. LEXIS 1486, 78 U.S.L.W. 3481 (U.S. 2010).

Law enforcement officers substantially complied with the knock-and-announce statute by waiting 15 seconds after knocking twice to forcibly enter defendant's apartment pursuant to a search warrant; the officers could have reasonably inferred that they had been constructively refused admittance after 15 seconds, given that the warrant was executed at a one-bedroom residence in the middle of the afternoon in connection with a murder investigation and that the officers had reason to believe that a suspect was inside the residence with access to a firearm. *Atchison v. United States*, 982 A.2d 1138, 2009 D.C. App. LEXIS 543 (2009), writ of certiorari denied by 130 S. Ct. 1549, 176 L. Ed. 2d 140, 2010 U.S. LEXIS 1486, 78 U.S.L.W. 3481 (U.S. 2010).

In order to justify a no-knock entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

In a danger-fraught situation, the officers who are seeking entry under the knock-and-announce statute in order to execute a search warrant may more reasonably infer that entry was refused than under other circumstances.

United States v. Owens, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

Under the theory of exigent circumstances, as exception to the "knock and announce" statute that requires the police to provide notice before entering a home to execute a search warrant, the police may enter a home to execute a warrant without waiting for a reply if they have reason to believe that the occupants are destroying evidence or if there is reason to believe that the officers executing the warrant are in danger. U.S. Const. Amend. 4; 18 U.S.C. § 3109; D.C. Code 1981, § 23-524(a). *Moore v. United States*, 748 A.2d 915, 2000 D.C. App. LEXIS 37 (2000).

Exigent circumstances, as exception to the "knock and announce" statute that requires the police to provide notice before entering a home to execute a search warrant, do not exist anytime a search warrant is related to the seizure of guns. U.S. Const. Amend. 4; 18 U.S.C. § 3109; D.C. Code 1981, § 23-524(a). *Moore v. United States*, 748 A.2d 915, 2000 D.C. App. LEXIS 37 (2000).

Exigent circumstances, based on a fear that their safety may be compromised because of the possible presence and use of weapons, existed which justified police to forcibly enter defendant's apartment and execute a search warrant for weapons, though police did not comply with the "knock and announce" statute; clear and direct evidence that there were weapons on the premises was provided by a reliable informant who observed, as he purchased drugs in the apartment, three individuals with handguns in their waistbands, and there was a realistic possibility that the apartment's occupants would use weapons against the police, in that the occupants declared their intent to use their weapons to protect their drug business. U.S.C. Const. Amend. 4; 18 U.S.C. § 3109; D.C. Code 1981, § 23-524(a). *Moore v. United States*, 748 A.2d 915, 2000 D.C. App. LEXIS 37 (2000).

Forced entry to execute search warrant was justified by evidence of exigent circumstances which showed that police had reason to believe that defendant was armed and that there was a realistic possibility he might use deadly force against entering police officers. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

As a general rule, when government invokes concerns for police safety, based upon possible presence of weapon, to justify forced entry to execute search warrant, government must show that police had concrete, particularized evidence that reasonably led them to believe

that there were weapons on premises and there was realistic possibility that occupant or occupants would use weapons against them. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Evidence that suspect merely possesses a weapon is insufficient to justify a forced entry to execute search warrant. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

To justify forced entry to execute search warrant, belief that weapon is on premises and may well be used must be based upon particularized information or specific prior incidents. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Where police are attempting to execute search warrant related to violent crime, lesser degree of exigency is required for forced entry if police have at least knocked and announced themselves before making forced entry, rather than entirely disregarding knock and announce requirement. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Exigent circumstances justifying forced entry to execute search warrant are not limited to last minute surprises that are discovered by police only after they have arrived on the scene. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Test for whether exigent circumstances existed justifying officers breaking into residence only five seconds after they knocked and an-

nounced their authority and purpose is how reasonable and experienced officer would respond under same circumstances. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b), 23-524, 23-524(a), 33-565(g); U.S. Const. Amend. 4; 18 U.S.C. § 3109. *Culp v. United States*, 624 A.2d 460, 1993 D.C. App. LEXIS 114 (1993).

Exigency existed justifying police officers breaking into residence using battering ram only five seconds after they knocked and announced that they were police officers executing search warrant, where police officers arrived at residence knowing that defendant was suspected of committing as many as 12 robberies using Uzi-type weapon, that defendant had used weapon to take human shield to insure safe escape after committing latest robbery, that Uzi had been seen on premises within past 24 hours, and officers' knock and announcement of their authority and purpose was met with silence even though they had seen lights and heard voices inside home. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b), 23-524, 23-524(a), 33-565(g); U.S. Const. Amend. 4; 18 U.S.C. § 3109. *Culp v. United States*, 624 A.2d 460, 1993 D.C. App. LEXIS 114 (1993).

— In general.

Officers seeking to execute arrest warrant of suspect had reasonable belief that suspect resided at defendant's apartment, and therefore could enter apartment to effect arrest; officer had learned that suspect had moved out residence where officer had believed suspect to reside, officer subsequently was told that if suspect was not at residence officer believed suspect was residing at, that suspect would be with defendant, and officer interviewed several employees at defendant's apartment building and learned that suspect was living in defendant's apartment. *Dockery v. United States*, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Even assuming that defendants, who were employees of charter school, had standing to challenge police officers' warrantless entry into school and subsequent search and seizure, defendants' Fourth Amendment rights were not implicated by officers' warrantless entry into common, public areas of school. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

The Fourth Amendment ban on police bringing members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties is not in aid of the execution of the warrant surely applies to entries onto grounds appurtenant to a home, such as a backyard. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

The Fourth Amendment incorporates the common-law requirement that police officers entering a dwelling must knock on the door and announce their identity and purpose before attempting forcible entry. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

The knock and announce rule is not designed to protect the privacy of the home or the interests of all who reside there in preserving that privacy even in their absence; rather, it is to warn those persons who are present to prepare themselves for a lawful police intrusion and to open the door and peaceably admit the police and, thus, serves to protect (1) the interest in avoiding needless shock, fright, embarrassment, and violence that might be caused by an unannounced entry and (2) the interest in avoiding physical damage to property. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

At least three purposes underlie knock-and-announce requirement imposed on police officers executing search warrant: (1) it reduces the potential for violence to both the police officers and the occupants of the house into which entry is sought; (2) it guards against the needless destruction of private property; and (3) it symbolizes the respect for individual privacy. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

Important purpose of the knock-and-announce statute is that it safeguards against the possibility that police officers may be mistaken for prowlers or unlawful intruders. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

In regard to knock-and-announce requirement before entry to execute search warrant, there is no bright-line rule that waiting fifteen seconds or less is per se unreasonable while waiting that length of time or more is per se reasonable under the Fourth Amendment. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

At least three purposes underlie the knock-and-announce requirement for entry to a dwelling by police executing a search warrant: (1) it reduces the potential for violence to both the officers and the occupants of the house into which entry is sought; (2) it guards against the needless destruction of private property; and (3) it symbolizes the respect for individual privacy summarized in the adage that "a man's house is his castle." *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

The protection of a citizen's home from forced entry is at the core of the values secured by the Fourth Amendment and by the knock-and-announce statute. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

Neither inevitable discovery doctrine nor independent source doctrine excused violation of "knock and announce" statute by police officers executing warrant for search of dwelling. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

The requirement that the police knock and announce their presence before entering an individual's home to execute a search warrant is inherent, at least to some degree, in the Fourth Amendment's prohibition against unreasonable searches and seizures. U.S. Const. Amend. 4; D.C. Code 1981, § 23-524(a). *Moore v. United States*, 748 A.2d 915, 2000 D.C. App. LEXIS 37 (2000).

Purposes of knock and announce rule are (1) reduction of potential violence to both occupants and police resulting from unannounced entry, (2) prevention of unnecessary property damage, and (3) protection of occupant's right to privacy. 18 U.S.C. § 3109; D.C. Code 1981, § 23-524. *Coleman v. United States*, 728 A.2d 1230, 1999 D.C. App. LEXIS 110 (1999), writ of certiorari denied by 528 U.S. 909, 120 S. Ct. 256, 145 L. Ed. 2d 215, 1999 U.S. LEXIS 6366, 68 U.S.L.W. 3231 (1999).

Police entry into defendant's apartment was not a "breaking" within meaning of knock and announce statute, though police stated that they had a search warrant and did not wait for response from defendant before they entered, where door was open, and police knocked and announced their purpose while defendant was looking at them and was aware of their presence. U.S. Const. Amend. 4; D.C. Code 1981, § 33-565(g). *Belton v. United States*, 647 A.2d 66, 1994 D.C. App. LEXIS 154 (1994), writ of certiorari denied by 514 U.S. 1028, 115 S. Ct. 1383, 131 L. Ed. 2d 236, 1995 U.S. LEXIS 2184, 63 U.S.L.W. 3690 (1995).

Entry through an open door by a police officer with search warrant, after occupant is made aware of officer's presence and purpose, is not a "breaking" within meaning of knock and announce statute. U.S. Const. Amend. 4; D.C. Code 1981, § 33-565(g). *Belton v. United States*, 647 A.2d 66, 1994 D.C. App. LEXIS 154 (1994), writ of certiorari denied by 514 U.S. 1028, 115 S. Ct. 1383, 131 L. Ed. 2d 236, 1995 U.S. LEXIS 2184, 63 U.S.L.W. 3690 (1995).

Underlying purpose of knock and announce requirement is threefold: it reduces potential for violence to both police officers and occupants of house in which entry is sought; it guards against needless destruction of private property; and it symbolizes respect for individual privacy; however, those interests are not abso-

lute and can be overridden in certain circumstances. D.C. Code 1981, § 23-524(a). *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Failure to observe statutory requirement that police knock, announce their purpose and identity, and wait to be refused admittance before attempting forced entry, cannot be justified by general assumption that certain classes of persons subject to arrest are more likely than others to resist arrest, attempt to escape, or destroy evidence. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

— Ruse, entry.

Guiding factor in determining whether entry into dwelling effected by a ruse is reasonable is whether ruse frustrates purposes of knock and announce rule. U.S. Const. Amend. 4; 18 U.S.C. § 3109; D.C. Code 1981, § 23-524. *Coleman v. United States*, 728 A.2d 1230, 1999 D.C. App. LEXIS 110 (1999), writ of certiorari denied by 528 U.S. 909, 120 S. Ct. 256, 145 L. Ed. 2d 215, 1999 U.S. LEXIS 6366, 68 U.S.L.W. 3231 (1999).

Entry in dwelling obtained by means of a ruse does not constitute a "breaking" within meaning of knock-and-announce statutes. 18 U.S.C. § 3109; D.C. Code 1981, § 23-524. *Coleman v. United States*, 728 A.2d 1230, 1999 D.C. App. LEXIS 110 (1999), writ of certiorari denied by 528 U.S. 909, 120 S. Ct. 256, 145 L. Ed. 2d 215, 1999 U.S. LEXIS 6366, 68 U.S.L.W. 3231 (1999).

Entry into defendant's house by officers with valid search warrant, by use of ruse about burglary call on defendant's elderly, invalid mother, did not violate local and federal knock-and-announce statutes. 18 U.S.C. § 3109; D.C. Code 1981, § 23-524. *Coleman v. United States*, 728 A.2d 1230, 1999 D.C. App. LEXIS 110 (1999), writ of certiorari denied by 528 U.S. 909, 120 S. Ct. 256, 145 L. Ed. 2d 215, 1999 U.S. LEXIS 6366, 68 U.S.L.W. 3231 (1999).

Entry into defendant's house by officers with valid search warrant, by use of ruse about burglary call on defendant's elderly, invalid mother, was reasonable under Fourth Amendment; potential for violence was greatly reduced by type of ruse employed, ruse reduced possible danger of harm to defendant's mother that might have resulted if entry had been

denied and police found it necessary to break down door, effectiveness of ruse forestalled any destruction of property that might otherwise have resulted, and privacy of occupants was maintained because officers at door knocked and waited to get permission to enter from mother. U.S.C. Const. Amend. 4; 18 U.S.C. § 3109; D.C. Code 1981, § 23-524. *Coleman v. United States*, 728 A.2d 1230, 1999 D.C. App. LEXIS 110 (1999), writ of certiorari denied by 528 U.S. 909, 120 S. Ct. 256, 145 L. Ed. 2d 215, 1999 U.S. LEXIS 6366, 68 U.S.L.W. 3231 (1999).

Exclusionary rule.

Whether the exclusionary rule is appropriately imposed in a particular case is an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

When media representatives are present in violation of the Fourth Amendment during execution of a search warrant, the exclusionary rule applies to evidence that media representatives help to recover, but not to evidence that the police lawfully recover without media help. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Evidence that police acquire during a search with the media present, but without media help, is not excludable merely because it was recovered in the neighborhood of a Fourth Amendment violation. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Any Fourth Amendment violation from police officers inviting a television news crew to join them when they searched defendant's home and backyard did not require exclusion of weapons and ammunition found and recovered by police on their own without media help. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Evidence obtained by way of a knock and announce violation may be suppressed on motion by a defendant with standing to challenge the violation. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct.

2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

The rights assured by the Fourth Amendment are personal rights, which may be enforced by exclusion of evidence only at the instance of one whose own protection was infringed by the search and seizure. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Statutory violation by waiting seven weeks to return search warrant to superior court did not prejudice defendant and, therefore, did not justify exclusion of lawfully seized evidence; the police did furnish a copy of the warrant to defendant's family on the day of the search. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Incidental search of premises.

Search that revealed gun underneath pillow was a valid search incident to a lawful arrest; police officers went to defendant's house with an arrest warrant for him knowing that he was suspected of being dangerous and unpredictable and a threat to the community, the pillow was very close to defendant at the time of his arrest, since he had his head on, and his hands under, the pillow when the police arrived, and the pillow was lifted shortly after defendant's arrest. *Young v. United States*, 982 A.2d 672, 2009 D.C. App. LEXIS 505 (2009), writ of certiorari denied by 131 S. Ct. 176, 178 L. Ed. 2d 106, 2010 U.S. LEXIS 6711, 79 U.S.L.W. 3199 (U.S. 2010).

Incidental searches of persons.

Grocery store owner's civil rights were not violated when police officers searched his person and arrested him following discovery of ledger book containing lottery numbers during search of his business for evidence of numbers operation conducted pursuant to search warrant where officers had had probable cause to search and arrest owner, notwithstanding fact that search of owner's person was not authorized in search warrant. 42 U.S.C. § 1983. *Washington v. District of Columbia*, 685 F. Supp. 264, 1988 U.S. Dist. LEXIS 3743 (1988).

Police officers had authority to frisk defendant's jacket, which resulted in the seizure of a gun, as warrant authorized a search for firearms and ammunition, including two guns that could easily be concealed in a jacket pocket, and when police were refused entry into defendant's apartment, they could reasonably believe that anyone inside was associated with the firearms.

United States v. Owens, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

Searches of defendant's person subsequent to his arrest, which resulted in the seizure of marijuana and crack cocaine, were lawful as incident to his arrest. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Warrantless search of defendant found on premises named in search warrant was proper in view of statute allowing officer executing search warrant to search any person on premises to extent reasonably necessary to find property enumerated in warrant which may be concealed upon the person, and in view of officer's knowledge of information from informant that person fitting defendant's general description had been seen selling narcotics on named premises. D.C. Code §§ 23-524(g), 33-401, 33-402. *Thomas v. United States*, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

Officers executing warrant for search of delicatessen for gambling paraphernalia, having received tip from informant that people were inside that had numbers slips on them, had sufficient grounds to search the five or six persons on the premises when the warrant was executed. D.C. Code § 23-524(g); U.S. Const. Amend. 4. *United States v. Graves*, 315 A.2d 559, 1974 D.C. App. LEXIS 369 (1974).

Where on executing warrant authorizing search of after-hours club or bar for a "gaming table and other related gambling paraphernalia", police officers knocked twice and announced they were police officers with a search warrant, after hearing someone run away from the door, officers waited approximately 30 seconds and then forced door open and from previous observations police had probable cause to believe that extensive gambling was being carried on, police had sufficient grounds to search the individuals present and tinfoil packet found on in-depth search of an occupant was properly seized and would be admissible in prosecution for possession of heroin; officers had reasonable cause to believe that occupants possessed, concealed and were about to remove or destroy evidence for which they had a search warrant. 18 U.S.C. § 2232; D.C. Code §§ 22-1515(a), 23-524, 23-524(g), 33-402. *United States v. Miller*, 298 A.2d 34, 1972 D.C. App. LEXIS 306 (1972).

In execution of a validly obtained search warrant, an officer may seize property from the person of an individual on the premises to be searched in order to prevent the destruction of evidence. D.C. Code §§ 23-524, 23-524(g). *United States v. Miller*, 298 A.2d 34, 1972 D.C. App. LEXIS 306 (1972).

Multiple sovereignties.

Search under state warrant but conducted by District of Columbia police, producing evidence

examined by federal experts who later testified at federal trial, was a "federal search" subject to federal rule. Fed.Rules Crim.Proc. rule 41, 18 U.S.C. *United States v. Haywood*, 464 F.2d 756, 1972 U.S. App. LEXIS 10000 (C.A.D.C. 1972).

An entry through a closed but unlocked door is considered a "breaking" and hence subject to the statutory "knock-and-announce" rule for entry to a dwelling by police executing a search warrant. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

The common-law "knock-and-announce" principle extant at the time of the framing of the Constitution forms a part of the reasonableness inquiry under the Fourth Amendment, regarding entry to a dwelling by police executing a search warrant. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

Protective sweep.

Police officers had reasonable suspicion to conduct broader-type protective sweep of home following defendant's arrest, including search of basement bedrooms and the space between mattresses and box springs in bedrooms, which revealed ammunition; officers knew that defendant was a murder suspect and that his arrest warrant for failure to appear was based on a separate carrying a pistol without a license (CPWL) case, and defendant had not yet been positively identified as the man they were looking for at the time the protective sweep commenced. *Young v. United States*, 982 A.2d 672, 2009 D.C. App. LEXIS 505 (2009), writ of certiorari denied by 131 S. Ct. 176, 178 L. Ed. 2d 106, 2010 U.S. LEXIS 6711, 79 U.S.L.W. 3199 (U.S. 2010).

Review.

Although the Court of Appeals, when reviewing claim that a search violated the knock-and-announce statute, defers to the trial court's findings of fact and reasonable inferences therefrom, it reviews de novo the ultimate legal determination as to whether those facts and inferences support a conclusion that the police violated the statute. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

Court of Appeals reviews de novo ultimate legal determination as to whether facts and inferences support conclusion that police did not violate knock and announce statute. D.C. Code 1981, § 23-524. *Poole v. United States*, 630 A.2d 1109, 1993 D.C. App. LEXIS 212 (1993), writ of certiorari denied by 513 U.S. 855, 115 S. Ct. 160, 130 L. Ed. 2d 98, 1994 U.S. LEXIS 6092, 63 U.S.L.W. 3261 (1994), writ of certiorari denied by 513 U.S. 858, 115 S. Ct. 166, 130 L. Ed. 2d 103, 1994 U.S. LEXIS 6136, 63 U.S.L.W. 3261 (1994).

Material issue of fact concerning whether defendant was attempting to flee when officers

knocked and announced their intent to search premises precluded appellate court from determining whether search of defendant, who was one of five persons in private house at the time of search and who was not named in search warrant, violated defendant's Fourth Amendment rights and thus judgment of conviction would be vacated and case remanded to trial court to make necessary factual findings and rule de novo on motion to suppress and if court upheld search and seizure and entered new judgment of conviction, defendant would have usual right to appeal. D.C. Code 1981, § 17-306; U.S. Const.Amend. 4. *White v. United States*, 512 A.2d 283, 1986 D.C. App. LEXIS 367 (1986).

Standing to challenge search.

Defendants, who were employees of charter school, lacked standing to challenge police officers' warrantless entry into school and subsequent search and seizure, as defendants did not have legitimate expectation of privacy in hallway or foyer, or outer portion of main office when officers entered school. *Gatlin v. United States*, 833 A.2d 995, 2003 D.C. App. LEXIS 620 (2003).

A resident does not have standing to complain of a violation of the knock and announce requirement of the Fourth Amendment, if he was away from the scene entirely, did not have a proprietary interest in the property, and had little or nothing at stake when the police made a forcible entry without first knocking and announcing their presence. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

A family member lacks standing when the illegality is merely failure to follow the knock-and-announce procedures of the Fourth Amendment, if that person was absent at the time of the entry and, if the unannounced entry caused damage to the premises, that person does not contribute to the maintenance of the premises. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Absent resident who did not own premises and was not responsible for upkeep lacked standing to challenge violation of knock and announce rule; even though he had an interest in a working front door, that interest alone is too slight to be deemed substantial, and the violation did not infringe an interest that the Fourth Amendment was designed to protect. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L.

Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Absent resident lacked standing to complain of the police use of force by handcuffing members of his family during execution of a search warrant. *Artis v. United States*, 802 A.2d 959, 2002 D.C. App. LEXIS 380 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2099, 155 L. Ed. 2d 1084, 2003 U.S. LEXIS 3898, 71 U.S.L.W. 3722 (2003).

Standing, as a proxy for whether one may assert the protections of either the knock-and-announce statute or the Fourth Amendment, does not implicate the subject matter jurisdiction of the court. *United States v. Owens*, 788 A.2d 570, 2002 D.C. App. LEXIS 3 (2002).

Resident washing his car near his dwelling, and resident directly across the street from the dwelling, had standing to challenge violation by police of "knock and announce" statute regarding execution of search warrant for the dwelling, where the residents were within earshot and eyeshot of the dwelling. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

An individual with the present possessory interest in the premises searched has standing to challenge that search even though he was not present when the search was made. *District of Columbia v. Mancouso*, 778 A.2d 270, 2001 D.C. App. LEXIS 157 (2001).

§ 23-525. Disposition of property.

A law enforcement officer or a designated civilian employee of the Metropolitan Police Department who seizes property in the execution of a search warrant shall cause it to be safely kept for use as evidence. No property seized shall be released or destroyed except in accordance with law and upon order of a court or of the United States attorney or Corporation Counsel for the District of Columbia [Attorney General for the District of Columbia] or one of their assistants.

(July 29, 1970, 84 Stat. 616, Pub. L. 91-358, title II, § 210(a); June 12, 1999, D.C. Law 12-284, § 8(a), 46 DCR 1328.)

Cross references. — Disposition of drugs seized under Uniform Narcotic Drug Act, see § 48-902.08.

Drug Paraphernalia Act of 1982, property subject to forfeiture under Act, see § 48-1104.

Property Clerk of Metropolitan Police Department, powers and duties, see §§ 5-119.01 to 5-119.07.

Prior Codifications. — 1981 Ed., § 23-525. 1973 Ed., § 23-525.

Temporary Amendment of Section. — Section 8(a) of D.C. Law 12-282 substituted "A law enforcement officer or a designated civilian employee of the Metropolitan Police Department" for "An officer or agent."

Section 13(b) of D.C. Law 12-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 8(a) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 8(a) of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, No-

vember 10, 1998, 45 DCR 8139), and § 8(a) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 12-282. — Law 12-282, the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-709. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-282 became effective on May 28, 1999.

Legislative history of Law 12-284. — Law 12-284, the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-710, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-284 became effective on June 12, 1999.

CASE NOTES

ANALYSIS

Construction and application.
Forfeiture.
Jurisdiction.

Construction and application.

Once an item of property is no longer pertinent to a criminal prosecution, it may be returned to owner on application to the same criminal court, though owner could also bring a civil action. *United States v. Wilson*, 540 F.2d 1100, 1976 U.S. App. LEXIS 8311 (C.A.D.C. 1976).

Forfeiture.

Claim by owner for return of property cannot be successfully resisted by the Government by asserting that the property is subject to forfeiture; if the Government seeks to forfeit the property, a proper proceeding should be instituted to accomplish that purpose. *United States v. Wilson*, 540 F.2d 1100, 1976 U.S. App. LEXIS 8311 (C.A.D.C. 1976).

Jurisdiction.

Federal district court in criminal case had jurisdiction and duty to return to defendant property seized from him in the investigation but which was not alleged to be stolen or contraband and which was not needed or was no longer needed as evidence, and return of

which had been sought before sentencing, despite contention that court lacked ancillary jurisdiction to dispose of the property after sentencing. Fed.Rules Crim.Proc. rule 41(e), 18 U.S.C. *United States v. Wilson*, 540 F.2d 1100, 1976 U.S. App. LEXIS 8311 (C.A.D.C. 1976).

Once a court's need for property seized from defendant terminated, it had both jurisdiction and duty to return the property, which was not alleged to be stolen or contraband, regardless and independently of the validity or invalidity of the underlying search and seizure, and thus despite any waiver by plea of guilty of claim of unlawfulness of the search and seizure. Fed.Rules Crim.Proc. rule 41(e), 18 U.S.C. *United States v. Wilson*, 540 F.2d 1100, 1976 U.S. App. LEXIS 8311 (C.A.D.C. 1976).

Whoever held money seized in the course of criminal investigation leading to prosecution in federal court held it subject to order of the federal court and subject to that court's judgment and the execution thereof, and thus return of money, which was not alleged to be stolen or contraband, to defendant after the criminal proceedings had been concluded was not precluded on ground that the money had been deposited into the District of Columbia's bank account. *United States v. Wilson*, 540 F.2d 1100, 1976 U.S. App. LEXIS 8311 (C.A.D.C. 1976).

Subchapter II-A. Currency Seized by the Metropolitan Police Department.

§ 23-531. Definitions.

For the purposes of this subchapter, the term:

(1) "Seized-currency" means moneys, coins, or negotiable instrument with monetary value, including personal checks, commercial checks, cashiers' checks, travelers' checks, bearer bonds, or money orders, seized by the Metropolitan Police Department or other District of Columbia law enforcement agency pending criminal forfeiture or civil forfeiture proceedings.

(2) "Independent evidentiary value" includes the presence of fingerprints, written notations; or dye markings, traceable amounts of narcotic residue or other identifying substance on currency, or the packaging of currency in an incriminating manner.

(October 4, 2000, D.C. Law 13-160, § 402, 47 DCR 4619.)

Legislative history of Law 13-160. — Law 13-160, the "Omnibus Police Reform Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-118, which was referred to the Committee on Government Oper-

ations. The Bill was adopted on first and second readings on February 1, 2000, and April 3, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-334 and transmitted to both Houses of Congress for

its review. D.C. Law 13-160 became effective on October 4, 2000.

§ 23-532. Depositing of seized currency.

(a)(1) Seized currency shall be promptly deposited in an interest-bearing escrow account in a federal insured financial institution in the District of Columbia to be administered by the Metropolitan Police Department pending final disposition of forfeiture proceedings. Where practical, seized foreign currency shall be converted to U.S. currency and deposited.

(2) Deposited seized currency, with any accrued interest, shall be divided and deposited as provided in section 48-907.02, or returned to the owners if directed by the Court, after the dispositions of forfeiture proceedings.

(b)(1) The Chief of Police may grant an exception to subsection (a) of this section, pursuant to a request from the United States Attorney or the Corporation Counsel for the District of Columbia [Attorney General for the District of Columbia], if the seized currency is to be used as evidence and has independent evidentiary value. Seized currency retained pursuant to this subchapter shall be stored according to routine evidentiary procedures established by the Chief of Police.

(2) The Chief of Police in consultation with the United States Attorney for the District of Columbia, shall consider whether other means of preserving the independent evidentiary value of the seized currency is feasible, including photography, in determining whether an exception to subsection (a) of this section shall be granted.

(3) If part of the seized currency has independent evidentiary value, the remaining currency shall be deposited pursuant to subsection (a) of this section.

(c) Nothing in this subchapter shall apply to currency advanced to the Metropolitan Police Department, from appropriated funds for use in undercover police activities.

(October 4, 2000, D.C. Law 13-160, § 402, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 23-531.

§ 23-533. Rules.

The Chief of Police, in consultation with the United States Attorney for the District of Columbia and the Corporation Counsel, shall promulgate regulations to implement this subchapter within 60 days of the effective date of this act [October 4, 2000].

(October 4, 2000, D.C. Law 13-160, § 402, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 23-531.

§ 23-534. Applicability.

The provisions of this subchapter shall apply to any seized currency in possession of the Metropolitan Police Department on the effective date of the regulations implementing this subchapter.

(October 4, 2000, D.C. Law 13-160, § 402, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 23-531.

Subchapter III. Wire Interception and Interception of Oral Communications.

§ 23-541. Definitions.

As used in this subchapter —

(1) the term “wire communication” means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities;

(2) the term “oral communication” means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation;

(3) the term “intercept” means the aural acquisition of the contents of any wire or oral communication through the use of any intercepting device;

(4) the term “intercepting device” means any electronic, mechanical, or other device or apparatus which can be used to intercept a wire or oral communication other than —

(A) any telephone or telegraph instrument, equipment, or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties; or

(B) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) the term “investigative or law enforcement officer” means any officer of the United States or of the District of Columbia who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this subchapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(6) the term “contents”, when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of that communication;

(7) the term “judge” means a judge of the Superior Court of the District of

Columbia, a judge of the District of Columbia Court of Appeals, a judge of the United States District Court for the District of Columbia, or a judge of the United States Court of Appeals for the District of Columbia circuit;

(8) the term “judge of competent jurisdiction” means, in addition to the judges included in paragraph (7) —

(A) a judge of a United States district court or a United States court of appeals not in the District of Columbia; or

(B) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire or oral communications;

(9) the term “aggrieved person” means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed;

(10) the term “communication common carrier” has the same meaning which is given the term “common carrier” by section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)); and

(11) the term “United States attorney” means the United States attorney for the District of Columbia or any of his assistants designated by him or otherwise designated by law to act in his place for the particular purpose in question.

(12) The term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(July 29, 1970, 84 Stat. 616, Pub. L. 91-358, title II, § 210(a); June 3, 1997, D.C. Law 11-275, § 14(c), 44 DCR 1408; Sept. 12, 2008, D.C. Law 17-231, § 24(a), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 23-541.
1973 Ed., § 23-541.

Effect of amendments. — D.C. Law 17-231 added par. (12).

Legislative history of Law 11-275. — For legislative history of D.C. Law 11-275, see Historical and Statutory Notes following § 23-523.

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008”, was intro-

duced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Application or affidavit.
Claims.
Construction and application.
Jurisdiction.
Order or warrant.
Pen registers.
Standing.

Admissibility of evidence.

Where gambling paraphernalia which constituted evidence concerning a violation of federal gambling statute were obtained solely through

execution of search and arrest warrants predicated in part on conversations intercepted through court-ordered surveillance, a finding that the surveillance was illegal would mandate suppression of the warrants and evidence acquired pursuant to their execution as the tainted product of that surveillance. D.C. Code §§ 23-541(9), 23-547(a)(2)(D), 23-551(b); 18 U.S.C. §§ 1955, 2518(1)(b)(iv). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

In order for interception of wire or oral communication to be in accordance with wiretap

statute, and be admissible as evidence against nonconsenting party, one-party consent must have been given voluntarily. D.C. Code 1981, §§ 23-541, 23-542(b)(2), 23-556. *United States v. Sell*, 487 A.2d 225, 1985 D.C. App. LEXIS 316 (1985).

Application or affidavit.

Section of District of Columbia electronic surveillance statute requiring that wiretap order specify the identity of person, if known, whose communications are to be intercepted does not impose any broader obligation on Government to identify "known" individuals in its wiretap applications than that imposed by provision specifying that applications for wiretap order shall include the identity of the person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be intercepted. D.C. Code §§ 23-541 et seq., 23-547(a)(2)(D), (e)(1); 18 U.S.C. §§ 1955, 2518(1)(b)(iv); U.S. Const. Amend. 4. *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Claims.

It was appropriate to grant leave for national Muslim advocacy organizations to add claim under Wiretap Act, as well as its counterpart under District of Columbia law, in action against former intern with organization and his father, among others, for claims arising when defendants obtained access to organization's facilities and documents and subsequently published many of those documents; same factual allegations were raised in original complaint, but organizations at that time only asserted common law claims in connection with allegations. *Council on American-Islamic Rels. Action Network, Inc. v. Gaubatz*, 793 F.Supp.2d 311, 2011 U.S. Dist. LEXIS 67259 (2011).

Construction and application.

Although it may be necessary to place "bugging" devices on private premises, such "bugging" is to be accomplished with court's authorization limited to narrowest precise point necessary to accomplish law enforcement purpose and reasons for intrusion must be included in public record ultimately available for further court review whenever prosecution results. D.C. Code § 23-541 et seq.; 18 U.S.C. § 2510 et seq. *United States v. Ford*, 414 F. Supp. 879, 1976 U.S. Dist. LEXIS 15424 (1976), affirmed by 553 F.2d 146, 180 U.S. App. D.C. 1, 1977 U.S. App. LEXIS 10084 (1977).

Jurisdiction.

Federal district court did not lack jurisdiction to authorize electronic surveillance in an investigation of local offenses conducted solely by local officials. D.C. Code 1981, §§ 23-541(7),

23-547. *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

Order or warrant.

A warrant for wire interception of oral communications must be specific and, if more than one entry is involved, each intrusion must be treated formally and approved in advance so that judge or magistrate can supervise when and how entry is to be accomplished and a separate determination of probable cause and reasonableness is required as to each intrusion upon private premises. D.C. Code § 23-541 et seq.; 18 U.S.C. § 2510 et seq. *United States v. Ford*, 414 F. Supp. 879, 1976 U.S. Dist. LEXIS 15424 (1976), affirmed by 553 F.2d 146, 180 U.S. App. D.C. 1, 1977 U.S. App. LEXIS 10084 (1977).

Judicial authorization of electronic surveillance not limiting number of entries of private premises nor specifying either general time or manner of entry was far too sweeping and warrant authorizing such was invalid on its face. D.C. Code § 23-541 et seq.; 18 U.S.C. § 2510 et seq. *United States v. Ford*, 414 F. Supp. 879, 1976 U.S. Dist. LEXIS 15424 (1976), affirmed by 553 F.2d 146, 180 U.S. App. D.C. 1, 1977 U.S. App. LEXIS 10084 (1977).

That judge in fact approved each entry of private premises for electronic surveillance in advance and knew that, contrary to broad terms of warrant, police were planning to enter at a reasonable time, for valid reasons each time and by what appeared to be a wholly proper ruse, did not avoid consequences of overbreadth of the warrant itself, where the discussions that led to the judicial approval of each entry were not transcribed or presented by affidavits so that there was no supporting record to review; thus the warrant as written was binding and exclusive. D.C. Code § 23-541 et seq.; 18 U.S.C. § 2510 et seq. *United States v. Ford*, 414 F. Supp. 879, 1976 U.S. Dist. LEXIS 15424 (1976), affirmed by 553 F.2d 146, 180 U.S. App. D.C. 1, 1977 U.S. App. LEXIS 10084 (1977).

Pen registers.

Because pen registers do not accomplish "aural acquisition" or acquire contents of communications, they fall outside purview of the Omnibus Crime Control and Safe Streets Act which prescribes procedures by which wiretap order can be obtained, nor are they otherwise prohibited or regulated by wiretap provisions of the District of Columbia Code. 18 U.S.C. §§ 2510-2520, 2510(4); D.C. Code §§ 23-541 to 23-546. *Davis v. United States*, 390 A.2d 976, 1978 D.C. App. LEXIS 397 (1978).

Standing.

Those two defendants who were parties to intercepted conversations, which occurred subsequent to defendants' take-overs of three

buildings, did not have standing under District of Columbia statute to challenge the wiretaps, since those defendants, as trespassers, were not "aggrieved persons." D.C. Code §§ 23-541(9), 23-551(b). *Khaalis v. United States*, 408

A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

§ 23-542. Interception, disclosure, and use of wire or oral communications prohibited.

(a) Except as otherwise specifically provided in this subchapter, any person who in the District of Columbia —

(1) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire or oral communication;

(2) willfully discloses or endeavors to disclose to any other person the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

(3) willfully uses or endeavors to use the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire or oral communication;

shall be fined not more than \$10,000 or imprisoned not more than five years, or both; except that paragraphs (2) and (3) of this subsection shall not apply to the contents of any wire or oral communication, or evidence derived therefrom, that has become common knowledge or public information.

(b) It shall not be unlawful under this section for —

(1) an operator of a switchboard, or an officer, agent, or employee of a communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication, in the normal course of his employment while engaged in any activity which is a necessary incident to the rendering of his service or to the protection of the rights or property of the carrier of such communication, or to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, under this subchapter, is authorized to intercept a wire or oral communication, but no communication common carrier shall utilize service observing or random monitoring except for mechanical or service quality control checks;

(2) a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception; or

(3) a person not acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States, any State, or the District of Columbia, or for the purpose of committing any other injurious act.

(July 29, 1970, 84 Stat. 617, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in §§ 23-544 and 23-556.

Prior Codifications. — 1981 Ed., § 23-542. 1973 Ed., § 23-542.

CASE NOTES

ANALYSIS

Consent.

- Implied consent.
- In general.
- Voluntariness of consent.
- Expectation of privacy.
- Interception.
- Business extensions, interception.
- In general.
- Intent, interception.
- Pen registers, interception.
- Purpose.

Consent.

— Implied consent.

Under prior consent exception to federal wiretap statute, which authorizes interception of wire communications “where (3)27 one of the parties to the communication has given prior consent to such interception,” implicit consent is sufficient. 18 U.S.C. § 2511(2)(c, d). *Berry v. Funk*, 146 F.3d 1003, 1998 U.S. App. LEXIS 16090 (C.A.D.C. 1998).

Implied consent to interception of wire communications under the federal wiretap statute is inferred from surrounding circumstances indicating that the party knowingly agreed to the surveillance; the key question in such an inquiry is whether parties were given sufficient notice. *Berry v. Funk*, 146 F.3d 1003, 1998 U.S. App. LEXIS 16090 (C.A.D.C. 1998).

— In general.

Where attachment of audio-surveillance device to person from whom defendant had allegedly solicited a bribe was with the consent of such person, use of the device to record transaction in which such person gave defendant money did not violate the Communications Act or the Omnibus Crime Control and Safe Streets Act. Communications Act of 1934, § 605, 47 U.S.C. § 605; 18 U.S.C. §§ 2510 et seq., 2511(2)(c), 2517(3). *United States v. Bishton*, 463 F.2d 887, 1972 U.S. App. LEXIS 10061 (C.A.D.C. 1972).

Warrantless electronic surveillance of conversation between defendants and undercover agent was not illegal where the undercover agent consented. *United States v. Bryant*, 439 F.2d 642, 1971 U.S. App. LEXIS 12145 (C.A.D.C. 1971).

Monitoring by federal agents of telephone conversations between defendant and third party with third party's consent did not, under

then applicable law, deny Fourth Amendment rights of defendant. U.S. Const. Amend. 4. *United States v. Jones*, 433 F.2d 1176, 1970 U.S. App. LEXIS 7154 (C.A.D.C. 1970), writ of certiorari denied by 402 U.S. 950, 91 S. Ct. 1613, 29 L. Ed. 2d 120, 1971 U.S. LEXIS 2233 (1971).

Where reliable information that illegal sales of narcotics had occurred at certain address and that defendant was involved was confirmed by telephone call from informer to person other than defendant, overheard by police on extension, with caller's consent, there was no illegal interception of telephone message; and where, after first searching informant and finding him without narcotics, police observed him enter building at such address and shortly thereafter return with narcotics, search warrant they obtained was properly issued; and when after they entered premises and found a supply of narcotics and a congregation of known drug addicts, defendant entered premises and, upon seeing policemen, dropped bag of groceries he was carrying and removed a small bag from his pocket, there was ample cause to arrest him; and search of his person and use in evidence of narcotics found on his person was proper. *Barbour v. U.S.*, 264 F.2d 375, 1959 U.S. App. LEXIS 4385 (C.A.D.C. 1959).

Test for consent to interception of wire communication by one participating in the communication is less rigorous than consent required for waiver of a constitutional right and requires only that individual proceed despite his or her understanding that the conversation is being recorded, and thus promises of leniency do not vitiate consent under wiretap statute. 18 U.S.C. § 2511(2)(c). *United States v. Edmond*, 718 F. Supp. 988, 1989 U.S. Dist. LEXIS 9955 (1989).

Informants' consent to recording of wire communications to which they were parties was sufficiently shown by circumstantial evidence from the agents who witnessed the consent, and testimony from the informants themselves was not required. 18 U.S.C. § 2511(2)(c). *United States v. Edmond*, 718 F. Supp. 988, 1989 U.S. Dist. LEXIS 9955 (1989).

Wiretap tapes obtained with the consent of informants participating in the wire communications, as required by federal law, were admissible in federal prosecution regardless of whether the tapes were obtained in violation of state law requiring consent of both parties before a conversation may be recorded. 18

U.S.C. § 2511(2)(c). *United States v. Edmond*, 718 F. Supp. 988, 1989 U.S. Dist. LEXIS 9955 (1989).

Fourth Amendment is not violated where, during an investigation, a government agent, without revealing his true identity or purpose, consents to the recording of his private conversation with a suspect. U.S. Const. Amend. 4. *United States v. Kline*, 366 F. Supp. 994, 1973 U.S. Dist. LEXIS 12507 (1973).

Defendants' lawyers were not entitled to be told in advance of contemplated overhearing by the Government of a conversation between the defendants and a government informer, so that the lawyers might advise defendants of the risks involved in carrying on such a conversation. *United States v. Kline*, 366 F. Supp. 994, 1973 U.S. Dist. LEXIS 12507 (1973).

Use of even the most clandestine recorder is lawful if it falls within statute providing that it is not unlawful for a person to intercept a wire or oral communication where such person is a party to the communication or where one of parties to the communication has given prior consent to such interceptions. 18 U.S.C. §§ 2511(2)(d), 2512. *United States v. Bast*, 348 F. Supp. 1202, 1972 U.S. Dist. LEXIS 11878 (1972), vacated by 495 F.2d 138, 161 U.S. App. D.C. 312, 1974 U.S. App. LEXIS 10396 (1974).

Same strict standards which are required in order to validate consent to search and seizure should apply to consent to intercept telephone conversation. Communications Act of 1934, § 605, 47 U.S.C. § 605. *United States v. Zarkin*, 250 F. Supp. 728, 1966 U.S. Dist. LEXIS 6444 (D.D.C.1966).

Warrantless interception of telephone conversations between alleged prostitute and police officer accused of forcing her to sodomize him, based on one-party consent of alleged prostitute, did not violate police officer's Fourth Amendment rights. D.C. Code 1981, § 23-542(b)(2); U.S. Const. Amend. 4. *United States v. Sell*, 487 A.2d 225, 1985 D.C. App. LEXIS 316 (1985).

— Voluntariness of consent.

Consent of third party to monitoring by federal agents of telephone conversations with defendant was not coerced or involuntary notwithstanding that third party was himself under investigation for perjury before grand jury. *United States v. Jones*, 433 F.2d 1176, 1970 U.S. App. LEXIS 7154 (C.A.D.C. 1970), writ of certiorari denied by 402 U.S. 950, 91 S. Ct. 1613, 29 L. Ed. 2d 120, 1971 U.S. LEXIS 2233 (1971).

Because witness' consent to recording of telephone conversation was coerced, the listening in to telephone conversation was an interception in violation of Communications Act and the intercepted conversation could not be used as evidence in criminal prosecution. Communica-

tions Act of 1934, § 605, 47 U.S.C. § 605. *Laughlin v. United States*, 344 F.2d 187, 1965 U.S. App. LEXIS 6590 (C.A.D.C. 1965).

Authorization given by party to telephone conversation to monitor conversation is not involuntary, so as to render exception to wire tap statute inapplicable, so long as pressure is not initiated by police for purposes of overbearing will of party, and fact that authorization is given in hope of leniency does not render it involuntary. Communications Act of 1934, § 605, 47 U.S.C. § 605. *United States v. Zarkin*, 250 F. Supp. 728, 1966 U.S. Dist. LEXIS 6444 (D.D.C.1966).

Where witness admitted she had committed perjury and felt she had to cooperate with prosecuting officials, her consent for them to record her telephone conversations with defendant was not voluntary within communications statute. Communications Act of 1934, § 605, 47 U.S.C. § 605. *United States v. Laughlin*, 223 F. Supp. 623, 1963 U.S. Dist. LEXIS 6523 (D.D.C.1963).

In order to suppress evidence of wiretap conducted pursuant to one-party consent, party objecting to such evidence must show improper inducement or coercive threats. D.C. Code 1981, § 23-542(b)(2). *United States v. Sell*, 487 A.2d 225, 1985 D.C. App. LEXIS 316 (1985).

Consent to wiretap is not vitiated simply because government offers benefits in exchange for cooperation or calls party's attention to potential criminal prosecution. D.C. Code 1981, § 23-542(b)(2). *United States v. Sell*, 487 A.2d 225, 1985 D.C. App. LEXIS 316 (1985).

Evidence that alleged prostitute initiated complaint against police officer alleging that he forced her to sodomize him, later filed formal complaint, voluntarily informed investigators of her contact with officer after filing complaint, and knowingly cooperated with wiretap established that her consent to wiretap was voluntary, notwithstanding fact that she was potentially liable for prosecution on prostitution charges. *United States v. Sell*, 487 A.2d 225, 1985 D.C. App. LEXIS 316 (1985).

Government meets burden of showing that one-party consent to wiretap was voluntarily given by showing that consenting party engaged in communication knowing that it was being monitored by government agents. D.C. Code 1981, § 23-542(b)(2). *United States v. Sell*, 487 A.2d 225, 1985 D.C. App. LEXIS 316 (1985).

In order for interception of wire or oral communication to be in accordance with wiretap statute, and be admissible as evidence against nonconsenting party, one-party consent must have been given voluntarily. D.C. Code 1981, §§ 23-541, 23-542(b)(2), 23-556. *United States v. Sell*, 487 A.2d 225, 1985 D.C. App. LEXIS 316 (1985).

Expectation of privacy.

Defendant suspected of first-degree murder

did not have or exhibit an actual subjective expectation of audio privacy in police interview room, as required in order to otherwise establish that police violated the Fourth Amendment and the District of Columbia wiretapping statute when they recorded defendant's cell phone calls while he was alone in the interview room, where defendant hide his cell phone and hide his face while he was speaking on the phone, and detective told defendant before the interview began that cell phones should not be used in the interview room. *Napper v. United States*, 22 A.3d 758, 2011 D.C. App. LEXIS 294 (2011), writ of certiorari denied by 132 S. Ct. 435, 181 L. Ed. 2d 283, 2011 U.S. LEXIS 7156, 80 U.S.L.W. 3218 (U.S. 2011).

Any expectation of audio privacy that defendant, suspected of first-degree murder, had in police interview room was not reasonable, as required in order to otherwise establish that police violated the Fourth Amendment and the District of Columbia wiretapping statute when they recorded defendant's cell phone calls while he was alone in the interview room, though detective answered "no" to defendant's question "recording this" when polygraph equipment lit up, where detective also pointed out that defendant was not wired to the equipment, two camera pods were clearly visible in the interview room, detective told defendant twice that he should not use his cell phone in the room, defendant never sought assurances of privacy in the room, and police department staff twice entered the room unannounced. *Napper v. United States*, 22 A.3d 758, 2011 D.C. App. LEXIS 294 (2011), writ of certiorari denied by 132 S. Ct. 435, 181 L. Ed. 2d 283, 2011 U.S. LEXIS 7156, 80 U.S.L.W. 3218 (U.S. 2011).

Defendants, who forcibly took over three buildings without permission and held hostages for several days, could not have had a legitimate expectation of privacy, protected by the Fourth Amendment, against seizure of their telephone conversations by electronic surveillance on the premises; nor, in any event, did they have any such subjective expectation. D.C. Code § 23-548(a); U.S. Const. Amend. 4. *Khaalis v. United States*, 408 A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

Interception.

— Business extensions, interception.

Business extension exception to federal wiretap statute did not permit State Department officials and employees to secretly monitor conversation between Acting Assistant Secretary of State for Legislative Affairs and Assistant Secretary of State for Consular Affairs, concerning investigation into presidential candidate's passport; there was no reason presented

as to need for secret monitoring nor was it shown to be routine. 18 U.S.C. § 2510(5)(a). *Berry v. Funk*, 146 F.3d 1003, 1998 U.S. App. LEXIS 16090 (C.A.D.C. 1998).

Switchboard operator and provider exception to federal wiretap statute did not permit State Department officials and employees to secretly monitor conversation between Acting Assistant Secretary of State for Legislative Affairs and Assistant Secretary of State for Consular Affairs, concerning investigation into presidential candidate's passport; it was not in normal course of State Department employees' employment to engage in any monitoring contrary to Department's own guidelines, and exception in question was intended to apply to inevitability that switchboard operators, when connecting calls, would overhear small part of call, and was not intended to authorize random monitoring. 18 U.S.C. § 2511(2)(a)(i). *Berry v. Funk*, 146 F.3d 1003, 1998 U.S. App. LEXIS 16090 (C.A.D.C. 1998).

— In general.

Police officers' overhearing defendants' telephone conversations by means of a "spike mike" attached to heating duct of house, did not "intercept" conversations within statute prohibiting interception of telephone communications. U.S. Const. Amends. 4, 5; Communications Act of 1934, § 605, 47 U.S.C. § 605. *Silverman v. U.S.*, 81 S.Ct. 679, 1961 U.S. LEXIS 1605 (U.S. Dist. Col. 1961).

Action of officers who, with permission of owners, entered vacant row house adjoining that in which they suspected defendants were maintaining unlawful betting office, in inserting antenna spike under baseboard and into party wall and connecting ear phones so that they were then able to overhear defendants conduct their betting business by telephone, did not constitute such an unlawful "search and seizure" as is proscribed by the Fourth Amendment to the federal Constitution and such actions did not constitute an interference with any communications system in violation of the Communications Act of 1934. U.S. Const. Amend. 4; Communications Act of 1934, § 605, 47 U.S.C. § 605. *Silverman v. U.S.*, 275 F.2d 173, 1960 U.S. App. LEXIS 5452 (C.A.D.C. 1960).

Fact that witness in equitable action for revocation of physician's license made phone call to physician and allowed police officer to listen to conversation on extension line, did not constitute wire tapping or violate statute prohibiting the interception and divulging of intercepted communications. D.C. Code 1951, § 2-123; Communications Act, § 605, 47 U.S.C. § 605. *Ladrey v. Commission on Licensure to Practice Healing Art in District of Columbia*, 261 F.2d 68, 1958 U.S. App. LEXIS 3201 (C.A.D.C. 1958).

The "interception" of a telephone call within statute prohibiting divulging of any intercepted communication, involves idea that a speaker thinks he is talking to one person whereas in fact a third person is listening, and when a person calls a number on a telephone and speaks a message to whoever answers, he cannot claim that his message was intercepted merely because person responding is not person to whom he intended to speak. 47 U.S.C. § 605. *Billeci v. U.S.*, 184 F.2d 394, 1950 U.S. App. LEXIS 3100 (C.A.D.C. 1950).

Actions of marshals who were searching premises in which was found property alleged to be gambling paraphernalia, in picking up telephones when they rang and listening to what callers had to say, did not constitute an "interception" within statute prohibiting divulging of intercepted communications, and statute did not preclude marshals from testifying as to what was said, in prosecution for managing or carrying on a lottery. D.C. Code, 1940 § 22-1501; 47 U.S.C. § 605. *Billeci v. U.S.*, 184 F.2d 394, 1950 U.S. App. LEXIS 3100 (C.A.D.C. 1950).

Under statute proscribing the advertising of listening devices in such a way as to promote their use for surreptitious interception of wire or oral communications and under statute providing that it is not unlawful for a person to intercept a wire or oral communication where such person is a party to the communication or where one of parties to the communication has given prior consent to such interceptions, what distinguishes a lawful from an unlawful interception is the word "surreptitious". 18 U.S.C. §§ 2511(2)(d), 2512(1)(c)(ii). *United States v. Bast*, 348 F. Supp. 1202, 1972 U.S. Dist. LEXIS 11878 (1972), vacated by 495 F.2d 138, 161 U.S. App. D.C. 312, 1974 U.S. App. LEXIS 10396 (1974).

Where conversations in adjacent hotel room could be heard in defendant's room, by the unassisted ear, defendant recorded conversations by using a cassette-type recorder with a standard microphone no more sensitive than the human ear and there was no question of contrivance by defendant and defendant did not eavesdrop in a position where an individual would not normally be expected and did not place any device in an unauthorized place, defendant could not be found guilty of interception of oral communication in violation of Omnibus Crime Control and Safe Streets Act of 1968. 18 U.S.C. §§ 2510 et seq., 2510(2). *United States v. Carroll*, 337 F. Supp. 1260, 1971 U.S. Dist. LEXIS 10256 (1971).

Overhearing and recording of one end of a telephone conversation in adjoining hotel room without the actual interception of a communication passing through the wires does not constitute interception of a "wire communication" under statute dealing with interception of oral

and wire communications but rather constituted the interception of an "oral communication." 18 U.S.C. §§ 2510, 2511, 2511(1)(A); Communications Act of 1934, § 605, 47 U.S.C. § 605. *United States v. Carroll*, 332 F. Supp. 1299, 1971 U.S. Dist. LEXIS 11216 (1971).

Any distinction which might be drawn between consensual monitoring and third-party monitoring has no constitutional significance as far as the Fourth Amendment privacy concept is concerned. U.S. Const. Amend. 4. *United States v. Jones*, 292 F. Supp. 1001, 1968 U.S. Dist. LEXIS 11730 (D.D.C.1968), reversed by 433 F.2d 1176, 140 U.S. App. D.C. 70, 1970 U.S. App. LEXIS 7154 (1970).

Telephone communication was not "divulged" within prohibition of wire tap statute simply by being turned over to police. Communications Act of 1934, § 605, 47 U.S.C. § 605. *United States v. Zarkin*, 250 F. Supp. 728, 1966 U.S. Dist. LEXIS 6444 (D.D.C.1966).

"Intercept" within statutory prohibition on interception of communications implies seizure or diverting of course against one's will, and statute forbids only those interceptions not authorized by sender. Communications Act of 1934, § 605, 47 U.S.C. § 605. *United States v. Zarkin*, 250 F. Supp. 728, 1966 U.S. Dist. LEXIS 6444 (D.D.C.1966).

Telephone conversation recorded by use of induction coil was "intercepted" within prohibition of Communications Act. Communications Act of 1934, § 605, 47 U.S.C. § 605. *United States v. Laughlin*, 226 F. Supp. 112, 1964 U.S. Dist. LEXIS 6404 (D.D.C.1964).

Though telephone conversation was recorded by use of induction coil, and not by direct attachment to telephone or telephone line, message was "intercepted" within prohibition of Federal Communications Act. Communications Act of 1934, §§ 1 et seq., 605, 47 U.S.C. §§ 151 et seq., 605. *United States v. Laughlin*, 223 F. Supp. 623, 1963 U.S. Dist. LEXIS 6523 (D.D.C.1963).

Information, obtained by police officer when he listened, by means of telephone extension, to conversation ensuing when, at officer's instance, special employee of narcotics squad placed telephone call, was not obtained in violation of statute prohibiting person unauthorized by sender from "intercepting" any communication, and there was no such impropriety in issuance of search warrant procured by officers acting upon such information as would require suppression of narcotics seized under color of warrant. Communications Act of 1934, § 605, 47 U.S.C. § 605. *U.S. v. Barbour*, 164 F.Supp. 893, 1958 U.S. Dist. LEXIS 3908 (D.D.C.1958).

Under statute providing that no person shall divulge to "any person" contents of intercepted communication, playing back of recorded telephone conversation in court would constitute a prohibited divulgence. Communications Act of

1934, §§ 1 et seq., 605, 47 U.S.C. §§ 151 et seq., 605. *U.S. v. Stephenson*, 121 F.Supp. 274, 1954 U.S. Dist. LEXIS 3410 (D.D.C.1954).

Action of deputy marshals in answering a number of incoming telephone calls after raiding premises, listening to what party calling said and participating in conversation did not constitute an "interception" within provision of Federal Communications Act prohibiting interception of communications, so as to render evidence obtained thereby inadmissible in subsequent criminal prosecution. Federal Communications Act of 1934, § 605, 47 U.S.C. § 605. *U.S. v. Lewis*, 87 F.Supp. 970, 1950 U.S. Dist. LEXIS 4274 (D.D.C.1950).

The recording of a telephone conversation with consent of one of parties to it does not constitute an "interception" in violation of provision of Federal Communications Act prohibiting interception of communications, so as to render recording inadmissible in criminal prosecution. Federal Communications Act of 1934, § 605, 47 U.S.C. § 605. *U.S. v. Lewis*, 87 F.Supp. 970, 1950 U.S. Dist. LEXIS 4274 (D.D.C.1950).

— Intent, interception.

Determinative factor in assessing whether intercepted communication violates Title III of Omnibus Crime Control and Safe Streets Act is whether primary motivation, or determinative factor in party's motivation for intercepting conversation was criminal or tortious. 18 U.S.C. § 2511(2)(d). *United States v. Cisneros*, 59 F.Supp.2d 58, 1999 U.S. Dist. LEXIS 11409 (1999).

In determining whether intercepted communication violates Title III of Omnibus Crime

Control and Safe Streets Act, use of tape recordings is not critical factor, but rather, it is party's intent in making recording that is determinative. 18 U.S.C. § 2511(2)(d). *United States v. Cisneros*, 59 F.Supp.2d 58, 1999 U.S. Dist. LEXIS 11409 (1999).

— Pen registers, interception.

Because pen registers do not accomplish "aural acquisition" or acquire contents of communications, they fall outside purview of the Omnibus Crime Control and Safe Streets Act which prescribes procedures by which wiretap order can be obtained, nor are they otherwise prohibited or regulated by wiretap provisions of the District of Columbia Code. 18 U.S.C. §§ 2510-2520, 2510(4); D.C. Code §§ 23-541 to 23-546. *Davis v. United States*, 390 A.2d 976, 1978 D.C. App. LEXIS 397 (1978).

Purpose.

Statute dealing with unauthorized publication or use of telegraph, telephone, and radio communications was aimed at prohibiting a telephone switchboard operator from divulging any conversation that may be overheard, or any telegraph or radio operator from disclosing contents of a telegram or radiogram, and to preclude any unauthorized person from surreptitiously attaching some mechanical apparatus to a telephone or telegraph wire and thereby listening to or otherwise intercepting communications passing over the wire, without knowledge of parties to conversation or message. Communications Act of 1934, § 605, 47 U.S.C. § 605. *U.S. v. Sullivan*, 116 F.Supp. 480, 1953 U.S. Dist. LEXIS 2250 (D.D.C.1953).

§ 23-543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited.

(a) Except as otherwise specifically provided in subsection (b) of this section, any person who in the District of Columbia —

(1) willfully possesses, sells, distributes, manufactures, or assembles an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(2) willfully places in any newspaper, magazine, handbill, or other publication any advertisement of —

(A) any intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(B) any intercepting device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire or oral communication;

shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(b) It shall not be unlawful under this section for —

(1) a communication common carrier or an officer, agent, or employee of, or a person under contract with a communication common carrier, in the usual course of the communication common carrier's business; or

(2) a person under contract with the Government of the United States, a State or a political subdivision thereof, or the District of Columbia, or an officer, agent, or employee of the Government of the United States, a State or a political subdivision thereof, or the District of Columbia;

to possess, sell, distribute, manufacture or assemble, or advertise any intercepting device, while acting in furtherance of the appropriate activities of the United States, a State or political subdivision thereof, the District of Columbia, or a communication common carrier.

(July 29, 1970, 84 Stat. 618, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in §§ 23-544 and 23-556.

Prior Codifications. — 1981 Ed., § 23-543. 1973 Ed., § 23-543.

CASE NOTES

Pleas.

Record established that defendants' guilty pleas to charge of breaking into national political party headquarters were voluntary and knowing, that, on allocution, defendants deliberately and repeatedly deceived the court, that withdrawal of pleas eight months after they were entered would prejudice the government, and that defendants' supposed national security reasons for their guilty pleas were based on entirely subjective beliefs which were patently unreasonable. 18 U.S.C. §§ 371, 2510, 2511; D.C. Code §§ 22-1801(b), 23-543(a); Fed.Rules Crim.Proc. rules 11, 32(d), 18 U.S.C. *United States v. Barker*, 514 F.2d 208, 1975 U.S. App. LEXIS 15942 (C.A.D.C. 1975), writ of certiorari denied by 421 U.S. 1013, 95 S. Ct. 2420, 44 L. Ed. 2d 682, 1975 U.S. LEXIS 1926 (1975).

Where prosecution in its opening statement had outlined overwhelming case against defendants, charged with burglary of political party headquarters, pleas were accepted only after

extraordinarily elaborate procedure, stretching over four days, conducted largely in camera, and involving two competent attorneys, and neither counsel, prosecutor, nor judge exerted the slightest pressure on defendants to induce them to plead guilty, withdrawal of pleas would substantially prejudice legitimate prosecution interests, defendants were granted "use immunity" so that they might testify before grand jury and congressional committees and, at time of plea, defendants had denied employment by government intelligence agencies, defendants would not be entitled, eight months after pleading guilty, to withdraw their pleas because they honestly, though mistakenly, believed that "national security" considerations required their silence. 18 U.S.C. §§ 371, 2510, 2511; D.C. Code §§ 22-1801(b), 23-543(a); Fed.Rules Crim.Proc. rules 11, 32(d), 18 U.S.C. *United States v. Barker*, 514 F.2d 208, 1975 U.S. App. LEXIS 15942 (C.A.D.C. 1975), writ of certiorari denied by 421 U.S. 1013, 95 S. Ct. 2420, 44 L. Ed. 2d 682, 1975 U.S. LEXIS 1926 (1975).

§ 23-544. Confiscation of wire or oral communication intercepting devices.

Any intercepting device in the District of Columbia —

- (1) possessed;
- (2) used;
- (3) sold;
- (4) distributed; or
- (5) manufactured or assembled;

in violation of section 23-542 or 23-543 may be seized and forfeited to the District of Columbia. Insofar as applicable and not inconsistent with the

provisions of this chapter, all provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property; the remission or mitigation of such forfeitures; the compromise of claims; and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents or other persons as may be authorized or designated for that purpose by the Mayor, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer. The proceeds from the sale of any property forfeited under this section shall be deposited in the Treasury to the credit of the general fund of the District of Columbia.

(July 29, 1970, 84 Stat. 619, Pub. L. 91-358, title II, § 210(a); Apr. 30, 1988, D.C. Law 7-104, § 7(b), 35 DCR 147.)

Prior Codifications. — 1981 Ed., § 23-544. 1973 Ed., § 23-544.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 23-545. Immunity of witnesses. [Repealed].

Repealed.

(Oct. 15, 1970, 84 Stat. 931, Pub. L. 91-452, title II, § 252.)

Prior Codifications. — 1981 Ed., § 23-545.

§ 23-546. Applications for authorization or approval of interception of wire or oral communications.

(a) The United States attorney may authorize, in writing, any investigative or law enforcement officer to make application to a court for an order authorizing the interception of wire or oral communications.

(b) The United States attorney may authorize, in writing, any investigative or law enforcement officer to make application to a court for an order of approval of the previous interception of any wire or oral communication, when the contents of such communication —

(1) relate to an offense other than that specified in an order of authorization;

(2) were intercepted in an emergency situation; or

(3) were intercepted in an emergency situation and relate to an offense other than that contemplated at the time the interception was made.

(c) An application for an order of authorization (as provided in subsection (a) of this section) or of approval (as provided in paragraph (2) of subsection (b) of this section) may be authorized only when the interception of wire or oral communications may provide or has provided evidence of the commission of or a conspiracy to commit any of the following offenses:

(1) Any of the offenses specified in the Act entitled “An Act to establish a code of law for the District of Columbia”, approved March 3, 1901, and listed in the following table:

Offense:	Specified in —
Arson	sections 820, 821 (D.C. Code, secs. 22-301, 22-302).
Burglary	section 823 (D.C. Code, sec. 22-801).
Destruction of property of value in excess of \$1000	section 848 (D.C. Code, sec. 22-303).
Gambling	sections 863, 866, 869e (D.C. Code, secs. 22-1701, 22-1705, 22-1713).
Kidnapping	section 812 (D.C. Code, sec. 22-2001).
Murder	sections 798, 800 (D.C. Code, secs. 22-2101, 22-2103).
Robbery	section 810 (D.C. Code, sec. 22-2801).

(2) Bribery as specified in the Act of February 26, 1936 (D.C. Code, sec. 22-704).

(3) Threats as specified in section 1501 of the Omnibus Crime Control and Safe Streets Act of 1968 (D.C. Code, secs. 22-5106, 22-1810).

(4) Offenses involving the manufacture, distribution, or possession with intent to manufacture or distribute controlled substances as specified in sections 401 through 403 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Code, secs. 48-904.01 through 48-904.03).

(5) Any of the offenses specified in the District of Columbia Theft and White Collar Crimes Act of 1982, and listed in the following table:

Offense:	Specified in —
Extortion	section 151 [D.C. Code, § 22-3251].
Blackmail	section 152 [D.C. Code, § 22-3252].
Bribery	section 302 [D.C. Code, § 22-712].
Obstruction of justice	section 502 [D.C. Code, § 22-722].
Receiving stolen property of value in excess of \$1000	section 132 [D.C. Code, § 22-3232].
Theft of property of value in excess of \$1000	section 111 [D.C. Code, § 22-3211].
Trafficking in stolen property	section 131 [D.C. Code, § 22-3231].

(July 29, 1970, 84 Stat. 620, Pub. L. 91-358, title II, § 210(a); Dec. 1, 1982, D.C. Law 4-164, § 601(f), 29 DCR 3976; Apr. 30, 1988, D.C. Law 7-104, § 7(c), 35 DCR 147; June 3, 2011, D.C. Law 18-377, § 14, 58 DCR 1174.)

Cross references. — Blackmail, see § 22-3252.

Bribery, see § 22-712.

Extortion, see § 22-3251.

Obstruction of justice, see § 22-722.

Receiving stolen property, see § 22-3232.

Theft, see § 22-3211.

Trafficking in stolen property, see § 22-3231.

Section references. — This section is referred to in §§ 23-547 and 23-556.

Prior Codifications. — 1981 Ed., § 23-546. 1973 Ed., § 23-546.

Effect of amendments. — D.C. Law 18-377, in subsec. (c)(1), substituted “value in excess of \$1000” for “value in excess of \$200”; and, in subsec. (c)(5), substituted “value in excess of \$1000” for “value in excess of \$250”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 514 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 514 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 4-164. — For legislative history of D.C. Law 4-164, see Historical and Statutory Notes following § 22-3201.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 23-544.

Legislative history of Law 18-377. — Law 18-377, the “Criminal Code Amendment Act of

2010”, was introduced in Council and assigned Bill No. 18-963, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 2, 2011, it was assigned Act No. 18-722 and transmitted to both Houses of Congress for its review. D.C. Law 18-377 became effective on June 3, 2011.

References in text. — “Section 1501 of the Omnibus Crime Control and Safe Streets Act of 1968,” referred to in paragraph (3) of subsection (c) of this section, was codified as § 22-2306 1981 Ed.. Section 22-2306 1981 Ed. was repealed by § 602(mm) of D.C. Law 4-164.

“(Section) 22-1810,” referred to at the end of paragraph (3) of subsection (c) of this section, derived from § 1502 of the Omnibus Crime Control and Safe Streets Act of 1968.

The “District of Columbia Theft and White Collar Crimes Act of 1982,” referred to in paragraph (5) of subsection (c) of this section, is D.C. Law 4-164.

Bracketed translations of the references to the District of Columbia Theft and White Collar Crimes Act of 1982 have been inserted in paragraph (5) of subsection (c) of this section for the convenience of the user.

Editor’s notes. — Section 7(c) of D.C. Law 7-104 purported to substitute “33-502” for “33-402,” “33-516” for “33-416,” and “33-602” for “33-702” 1981 Ed. in subsection (c)(4), apparently without regard to the amendment of this section by D.C. Law 4-164.

CASE NOTES

ANALYSIS

Authorization.

Conventional techniques.

Pen registers.

Suppression of evidence.

Use of information obtained.

Authorization.

Special designation of assistant attorney general to authorize application for order authorizing installation of electronic listening device satisfied statutory requirements even though Attorney General who had made the designation had been succeeded at time assistant attorney general authorized the application since delay in revalidation was relatively brief and since purposes of statutory requirements were adequately served. 18 U.S.C. § 2516(1). *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Where it was conceded by defendants that the United States Attorney had actually autho-

rized wiretap applications and that Assistant United States Attorney had, pursuant to established Justice Department policy, sought and received authorization of two Assistant Attorneys General who had been specifically designated to approve federal wiretap applications, failure of Assistant United States Attorney to obtain written authorization of United States Attorney did not require suppression of results of wiretap even though statute called for such written authorization. D.C. Code 1981, § 23-546(a). *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

Conventional techniques.

Affidavit supporting Government’s application for listening device provided required “full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.” 18 U.S.C. § 2518(1)(c). *United States v.*

Robinson, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Pen registers.

Because pen registers do not accomplish "aural acquisition" or acquire contents of communications, they fall outside purview of the Omnibus Crime Control and Safe Streets Act which prescribes procedures by which wiretap order can be obtained, nor are they otherwise prohibited or regulated by wiretap provisions of the District of Columbia Code. 18 U.S.C. §§ 2510-2520, 2510(4); D.C. Code §§ 23-541 to 23-546. *Davis v. United States*, 390 A.2d 976, 1978 D.C. App. LEXIS 397 (1978).

Assuming that probable cause was required for pen registers, information supplied by informer and personal observations of police officers of gambling activities presented probable cause. U.S. Const. Amend. 4; D.C. Code §§ 22-1508, 23-546(c); D.C. Code SCR, Criminal Rule 41-1(a). *Davis v. United States*, 390 A.2d 976, 1978 D.C. App. LEXIS 397 (1978).

Suppression of evidence.

Remedy of suppression of electronically obtained evidence is warranted only when government fails to satisfy any of the statutory requirements that directly and substantially implement congressional intention to limit use of intercept procedures to those situations clearly calling for employment of this extraordinary investigative device. 18 U.S.C. §§ 2510-2520. *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Use of information obtained.

When metropolitan police department offi-

cers intercept conversations relating to offenses specified in order of authorization, District of Columbia statute requiring officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use is not operative, and officers may disclose or use those conversations to extent that such disclosure or use is appropriate to the proper performance of their official duties. 18 U.S.C. § 2517(5); D.C. Code §§ 22-1501, 22-1505, 23-546(c)(1), 23-548(b). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Where wiretap applications and orders concerned gambling offenses for which the District of Columbia statute permitted court-authorized installation of electronic surveillance equipment, and evidence was intercepted which not only related to such offenses but also established probable cause to believe federal gambling offenses were being committed, metropolitan police department officers' disclosure of such evidence to FBI was not within contemplation of District of Columbia statute requiring officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use. D.C. Code §§ 23-546(c), 23-548(b), 23-553. *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

§ 23-547. Procedure for authorization or approval of interception of wire or oral communications.

(a) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge and shall state the applicant's authority to make the application. Each application shall include —

(1) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(2) a full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including (A) details as to the particular offense that has been, is being, or is about to be committed, (B) a particular description of the nature and location of the facilities from which or the place where the communication is to be or was intercepted, (C) a particular description of the type of communications sought to be or which were intercepted, and (D) the identity of the person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be or were intercepted;

(3) a full and complete statement as to whether or not other investigative

procedures have been tried and failed or why they reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous;

(4) a statement of the period of time for which the interception is or was required to be maintained, and if the nature of the investigation is or was such that the authorization for interception should not automatically terminate or should not have automatically terminated when the described type of communication has been or was first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will or would occur thereafter;

(5) a full and complete statement of the facts concerning all previous applications, known to the individual authorizing or making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(6) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the District of Columbia, if the judge determines on the basis of the facts submitted by the applicant that —

(1) there is or was probable cause for belief that the person whose communication is to be or was intercepted is or was committing, has committed, or is about to commit a particular offense enumerated in section 23-546;

(2) there is or was probable cause for belief that particular communications concerning that offense will or would be obtained through the interception;

(3) normal investigative procedures have or would have been tried and have or had failed or reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous; and

(4) there is or was probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be or were intercepted were used, are being used, or are about to be used, in connection with the commission of the offense, or are or were leased to, listed in the name of, or commonly used by the person referred to in paragraph (1).

(d) If the facilities from which a wire communication is to be or was intercepted are or were being used by, are or were about to be used by, or are or were leased to, listed in the name of, or commonly used by, a licensed physician, a licensed attorney, or practicing clergyman, or if the place where an oral communication is to be or was intercepted is or was a place used primarily for habitation by spouses or domestic partners, or primarily by a licensed physician, licensed attorney, or practicing clergyman for his own professional purposes, no order authorizing or approving such interception may be issued unless the court, in addition to the matters provided in subsection (c) of this section, determines that —

(1) such facilities or place are or were being used or are or were about to be used in connection with conspiratorial activities characteristic of organized crime; and

(2) such interceptions will be so conducted as to minimize or eliminate the number of interceptions of privileged wire or oral communications between licensed physicians and patients, licensed attorneys and clients, practicing clergymen and confidants, and spouses or domestic partners.

No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this subchapter shall lose its privileged character.

(e) Each order authorizing or approving the interception of any wire or oral communication shall specify —

(1) the identity of the person, if known, or otherwise a particular description of the person, if known, whose communications are to be or were intercepted;

(2) the nature and location of the communication facilities as to which, or the place where, authority to intercept or any approval of interception is or was granted;

(3) a particular description of the type of communication sought to be or which was intercepted, and a statement of the particular offense to which it relates;

(4) the identity of the agency authorized to intercept or whose interception is approved, and of the person authorizing the application; and

(5) the period of time during or for which the interception is authorized or approved, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(f) An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefore by the applicant at the prevailing rates.

(g) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (a) of this section and the court making the findings required by subsection (c) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as

soon as practicable, shall be conducted in such a way as to minimize or eliminate the interception of communications not otherwise subject to interception under this subchapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days.

(h) Whenever an order authorizing interception is entered pursuant to this subchapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Reports shall be made at such intervals as the judge may require.

(July 29, 1970, 84 Stat. 621, Pub. L. 91-358, title II, § 210(a); May 22, 1998, D.C. Law 12-114, § 3(a), 45 DCR 486; Sept. 12, 2008, D.C. Law 17-231, § 24(b), 55 DCR 6758.)

Section references. — This section is referred to in §§ 23-551, 23-555 and 23-556.

Prior Codifications. — 1981 Ed., § 23-547. 1973 Ed., § 23-547.

Effect of amendments. — D.C. Law 17-231, in subsec. (d), substituted “spouses or domestic partners,” for “a husband and wife” in the lead-in language, and substituted “spouses or domestic partners” for “husbands and wives” in par. (2).

Legislative history of Law 12-114. — Law 12-114, the “Criminal Amendment Act of 1998,”

was introduced in Council and assigned Bill No. 12-406, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-233 and transmitted to both Houses of Congress for its review. D.C. Law 12-114 became effective on May 22, 1998.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 23-541.

CASE NOTES

ANALYSIS

Application or affidavit, generally.

Authorization.

—In general.

—Jurisdiction, authorization.

—Overbroad authorization.

Conduct of surveillance.

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Conventional techniques.

Identity of person to be surveilled.

Probable cause, generally.

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Application or affidavit, generally.

Affidavit supporting Government’s application for listening device provided required “full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.” 18 U.S.C. § 2518(1)(c). *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Special designation of assistant attorney general to authorize application for order authorizing installation of electronic listening device satisfied statutory requirements even though Attorney General who had made the designa-

tion had been succeeded at time assistant attorney general authorized the application since delay in revalidation was relatively brief and since purposes of statutory requirements were adequately served. 18 U.S.C. § 2516(1). *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Applications for electronic interceptions at particular addresses clearly complied with statutory mandates where basis for concluding that normal investigative procedures had been exhausted or would be unlikely to produce essential evidence was adequately set forth and, though certain sections were framed in conclusory terminology, such sections could not rationally be separated from preceding detailed descriptions of investigative events. 18 U.S.C. § 2518(1)(c). *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

Fact that investigation proceeded through less intrusive pen register on telephones subscribed to by defendant had no probative value with respect to statutory requirements concerning telephones at another location where a wiretap was installed after other investigative techniques, including pen registers, had already been employed. D.C. Code § 23-

547(a)(2)(D), (3), (c)(3). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Government attorneys who sought authorization for wiretaps of certain individuals in connection with investigation of gambling activities were required to disclose to court fact that prior authorization for interception of communications of one of the persons under investigation had been granted, even though the prior authorization had been in connection with an unrelated narcotics investigation. 18 U.S.C. § 2518(1)(e); D.C. Code § 23-547(a)(5). *U.S. v. Bellosi*, 501 F.2d 833, 1974 U.S. App. LEXIS 7897 (C.A.D.C. 1974).

Authorization.

— In general.

Cases involving surreptitious entry "bugging" require bifurcated analysis in which both the trespass and the overhearing are subjected to independent Fourth Amendment analysis. *U.S. Const. Amend. 4. United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

Judge, in authorizing surreptitious entry onto private premises to install electronic surveillance devices, should consider danger that occupants of premises may discover unidentified intruders and oppose their entry, and specify in warrant to what extent, if at all, surreptitious entrance may be armed. 18 U.S.C. § 3109; *U.S. Const. Amend. 4. United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

When police seek to invade, surreptitiously and without consent, protected premises to install, maintain, or remove electronic surveillance devices, prior judicial authorization in form of valid warrant authorizing that invasion must be obtained. 18 U.S.C. §§ 2510-2520, 2518(7); D.C. Code § 23-548; *U.S.Ct. of App. D.C.Cir. Rule 8(g)*, 18 U.S.C.; *U.S. Const. Amend. 4. United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

Unless judicially created exception to warrant requirement can be invoked, when case involves incursions on both private premises and conversational privacy each requires prior valid judicial authorization, although such authorization may be contained in same document. 18 U.S.C. §§ 2510-2520; *U.S. Const. Amend. 4. United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

Person whose physical privacy is to be invaded has right to expect that judicial officers issuing intercept order will authorize only those entries and those means of entry necessary to satisfy demonstrated and cognizable needs of applicant. 18 U.S.C. §§ 2510-2520; *U.S. Const. Amend. 4. United States v. Ford*,

553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

— Jurisdiction, authorization.

Federal district court did not lack jurisdiction to authorize electronic surveillance in an investigation of local offenses conducted solely by local officials. D.C. Code 1981, §§ 23-541(7), 23-547. *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

— Overbroad authorization.

Court order authorizing police to enter and reenter private premises in any manner, including breaking and entering or other surreptitious entry, or entry and reentry by ruse and stratagem, for purpose of installing electronic surveillance devices on such premises, was unlawful as being overly broad where affidavits submitted in support of application for such order were devoid of allegations which would warrant conclusion that executing officers needed freedom to make multiple entries at any time of day or night, by any means they believed necessary. 18 U.S.C. §§ 2510-2520; *U.S. Const. Amend. 4. United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

Suppression of evidence obtained by electronic surveillance of private premises conducted through "bugs" covertly placed on such premises by police officers was proper remedy where entry on such premises to install such devices was made pursuant to court order which was overly broad and unsupported by affidavit. 18 U.S.C. §§ 2510-2520; *U.S. Const. Amend. 4. United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

Judicial authorization of electronic surveillance not limiting number of entries of private premises nor specifying either general time or manner of entry was far too sweeping and warrant authorizing such was invalid on its face. D.C. Code § 23-541 et seq.; 18 U.S.C. § 2510 et seq. *United States v. Ford*, 414 F. Supp. 879, 1976 U.S. Dist. LEXIS 15424 (1976), affirmed by 553 F.2d 146, 180 U.S. App. D.C. 1, 1977 U.S. App. LEXIS 10084 (1977).

That judge in fact approved each entry of private premises for electronic surveillance in advance and knew that, contrary to broad terms of warrant, police were planning to enter at a reasonable time, for valid reasons each time and by what appeared to be a wholly proper ruse, did not avoid consequences of overbreadth of the warrant itself, where the discussions that led to the judicial approval of each entry were not transcribed or presented by affidavits so that there was no supporting record to review; thus the warrant as written was binding and exclusive. D.C. Code § 23-541 et seq.; 18 U.S.C. § 2510 et seq. *United States v. Ford*, 414 F. Supp. 879, 1976 U.S. Dist. LEXIS

15424 (1976), affirmed by 553 F.2d 146, 180 U.S. App. D.C. 1, 1977 U.S. App. LEXIS 10084 (1977).

Conduct of surveillance.

There is obligation on part of judges and investigators to make reasonable efforts to minimize interception of conversation unrelated to original purpose of wiretap; however, this obligation does not extend to shutting off tape recorder in midst of properly authorized and conducted interception when unexpected evidence of another crime presents itself. D.C. Code § 23-547(g); 18 U.S.C. § 2518(5). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Construction and application.

Even nontrespassory interception of oral communications is subject to strictures of Fourth Amendment. U.S. Const. Amend. 4. *United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

Surreptitious physical invasion of home or protected business premises, when undertaken by police agents for purpose of installing, maintaining, or removing electronic eavesdropping devices, is, absent valid consent or sufficiently particularized judicial authorization to enter, violation of Fourth Amendment. 18 U.S.C. §§ 2510-2520; U.S. Const. Amend. 4. *United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

A warrant for wire interception of oral communications must be specific and, if more than one entry is involved, each intrusion must be treated formally and approved in advance so that judge or magistrate can supervise when and how entry is to be accomplished and a separate determination of probable cause and reasonableness is required as to each intrusion upon private premises. D.C. Code § 23-541 et seq.; 18 U.S.C. § 2510 et seq. *United States v. Ford*, 414 F. Supp. 879, 1976 U.S. Dist. LEXIS 15424 (1976), affirmed by 553 F.2d 146, 180 U.S. App. D.C. 1, 1977 U.S. App. LEXIS 10084 (1977).

Although it may be necessary to place "bugging" devices on private premises, such "bugging" is to be accomplished with court's authorization limited to narrowest precise point necessary to accomplish law enforcement purpose and reasons for intrusion must be included in public record ultimately available for further court review whenever prosecution results. D.C. Code § 23-541 et seq.; 18 U.S.C. § 2510 et seq. *United States v. Ford*, 414 F. Supp. 879, 1976 U.S. Dist. LEXIS 15424 (1976), affirmed by 553 F.2d 146, 180 U.S. App. D.C. 1, 1977 U.S. App. LEXIS 10084 (1977).

Conventional techniques.

Where affidavit accompanying wiretapping

application revealed that wiretap was sought only after more than six months of extensive investigation, discussed a number of techniques that had been tried or considered, and amply demonstrated need for electronic surveillance in this particular investigation, statutory requirement that wiretap be necessary and that normal investigative procedures had or would have failed was satisfied. D.C. Code 1981, § 23-547(c)(3). *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

Wiretapping may not be resorted to in situations where traditional investigative techniques would suffice to expose crime and may be utilized only where circumstances warrant surreptitious interception of wire and oral communications. 18 U.S.C. § 2518(1)(c). *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

Statutory proscriptions do not foreclose electronic surveillance until every other imaginable method of investigation has been unsuccessfully attempted; it is sufficient if the Government shows that other techniques are impractical under the circumstances and that it would be unreasonable to require pursuit of those avenues of investigation; showing must be tested in a practical and commonsense fashion. 18 U.S.C. § 2518(1)(c). *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

Because necessity is a keystone of congressional regulation of electronic eavesdropping, courts will give close scrutiny to applications challenged for noncompliance and will reject generalized exclusory statements that other investigative procedures would prove unsuccessful. 18 U.S.C. § 2518(1)(c). *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

Under both federal and District of Columbia wiretapping statutes, wiretapping authorization would be defective for failure to make further conventional investigations only where such investigations might obviate wiretap itself. D.C. Code § 23-547(a)(3), (c)(3); 18 U.S.C. § 2518(1)(c), (3)(c). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Identity of person to be surveilled.

Under federal and District of Columbia wiretapping statutes, application and court order authorizing wiretap must identify persons

whose conversations are likely to be intercepted only when there is also probable cause to believe that they are committing offense for which wiretap is sought. D.C. Code § 23-547(a)(2)(D), (e)(1); 18 U.S.C. § 2518(1)(b)(iv), (4)(a). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Under the circumstances, omission of defendants' names as targets of wiretap from application and court order approving wiretap did not violate District of Columbia wiretapping statute. D.C. Code § 23-547(a)(2)(D), (e)(1). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Section of District of Columbia electronic surveillance statute requiring that wiretap order specify the identity of person, if known, whose communications are to be intercepted does not impose any broader obligation on Government to identify "known" individuals in its wiretap applications than that imposed by provision specifying that applications for wiretap order shall include the identity of the person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be intercepted. D.C. Code §§ 23-541 et seq., 23-547(a)(2)(D), (e)(1); 18 U.S.C. §§ 1955, 2518(1)(b)(iv); U.S. Const. Amend. 4. *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Even though Government investigators had codefendant's full name and address as well as confidential source's information concerning gambling activities of an individual having same first name as codefendant, information available to Government investigators at time of wiretap application and order was insufficient to establish probable cause to believe defendant was implicated in the gambling offenses being investigated and was likely to be intercepted over the target telephones. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Where codefendant secured notice of fact and circumstances of surveillance, and the surveillance was conducted to minimize interception of communications not otherwise subject to interception under District of Columbia electronic surveillance statute, any unintentional failure of judge who issued wiretap order to comply with statutory requirement that order specify the identity or a particular description of "known" individuals was de minimis and did

not require reversal of codefendant's conviction. D.C. Code § 23-547(a)(2)(D), (e)(1); 18 U.S.C. § 2518(4)(a). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

When an individual's complicity in the crimes being investigated and likely use of the target telephones is discoverable, he is not "known" within mandate of District of Columbia electronic surveillance statute that known individuals be named in a wiretap application, but once Government possesses probable cause to suspect such complicity and use, the individual is "known" within the statutory language and must be brought to the attention of the judge ruling on the wiretap request. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Under mandate of District of Columbia electronic surveillance statute that application for a wiretap order shall include identity of person, if known, who committed, is committing, or is about to commit offense and whose communications are to be intercepted, standard for naming an individual in the application and order is probable cause, not conclusiveness. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Government's pursuance of policy of seeking wiretaps as to particular individuals only when it had absolutely no question as to the existence of probable cause did not excuse Government's failure to comply with mandate of District of Columbia electronic surveillance statute that application for wiretap shall include the identity of the person, if known, who committed, is committing, or is about to commit offense and whose communications are to be intercepted. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Where government investigators had probable cause to believe that defendant was a principal involved in gambling offenses under investigation, and also had probable cause to believe defendant would be overheard in conversations transpiring between telephones involved, defendant was a person "known" to be committing criminal offenses within mandate of District of Columbia electronic surveillance statute that application for wiretap shall include identity of person, if known, who committed, is committing, or is about to commit offense and whose communications are to be intercepted. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App.

LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Even though probable cause with respect to defendant's complicity in gambling operations and likely use of target telephones was established relatively shortly before wiretap application was filed, it still necessitated the Government's naming of defendant as a "known" subject of the proposed surveillance, under District of Columbia electronic surveillance statute which specifies that application for a wiretap order shall include identity of person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be intercepted. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

If all information possessed by Government at a particular moment in time is sufficient to establish probable cause to believe that an individual will be using a target telephone for illegal activities, he must be named as a "known" person in any wiretap application and order under District of Columbia electronic surveillance statute, regardless of whether Government believes the information has established such probable cause. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Although a relatively minor effort on part of Government investigators might have resulted in filling in gap that would have rendered codendant a "known" person within mandate of District of Columbia electronic surveillance statute that application for wiretap include identity of person, if known, who committed, is committing, or is about to commit offense and whose communications are to be intercepted, the Government was not required to make that effort as a precondition to a valid intercept order. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

If informant's statements were insufficient to establish probable cause to believe that one "Robert" would be using the target telephones to commit alleged gambling offenses, a particular description of "Robert" would not be a prerequisite to a valid intercept order under District of Columbia electronic surveillance statute. 18 U.S.C. § 2518(4)(a); D.C. Code § 23-547(a)(2)(D), (e)(1). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Failure to name "known" individual in application for wiretap violated a District of Columbia statutory provision which materially fur-

thered executive and judicial review functions, and thus suppression of evidence acquired as result of wiretap was appropriate remedy. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Even if omission of defendant's name from wiretap application and order, in violation of District of Columbia electronic surveillance statute, was inadvertent, Government investigators could not assert such "good faith" as a justification for introducing otherwise inadmissible evidence. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Probable cause, generally.

In determining whether issuance of particular search warrant was justified, affidavits of probable cause are to be tested in common-sense, realistic fashion and issuing magistrate's determination of probable cause should be paid great deference by reviewing courts. U.S. Const. Amend. 4. *United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

Mere fact of association with person engaged in illegal activities is insufficient to support finding of probable cause for purpose of including name as target of wiretap in application and court order approving wiretap. D.C. Code § 23-547(a)(2)(D), (e)(1); 18 U.S.C. § 2518(1)(b)(iv), (4)(a). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

In assessing existence vel non of probable cause, court ruling on wiretap request must determine the objective facts available to the police department as a collective entity. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Existence of probable cause to install a pen register on telephones subscribed to by defendant would not necessarily establish probable cause to intercept defendant's conversations through a wiretap on telephones at another location; however, particularly in light of fact that other evidence supported installation of wiretap, evidence enumerated in application for pen register was more than sufficient to require defendant's being named as a "known" individual in wiretap application and order, under District of Columbia electronic surveillance statute. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

The Court of Appeals will accord considerable deference to conclusions of judges making probable cause determinations in connection with applications for wiretap. D.C. Code § 23-547(a)(2)(D). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Sealing of evidence.

Government provided satisfactory explanation for delay of four days in arranging for judicial sealing of evidence obtained from listening device. 18 U.S.C. § 2518(8)(a); D.C. Code 1981, § 23-549(a). *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Suppression of evidence, generally.

Remedy of suppression of electronically obtained evidence is warranted only when government fails to satisfy any of the statutory

requirements that directly and substantially implement congressional intention to limit use of intercept procedures to those situations clearly calling for employment of this extraordinary investigative device. 18 U.S.C. §§ 2510-2520. *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Where gambling paraphernalia which constituted evidence concerning a violation of federal gambling statute were obtained solely through execution of search and arrest warrants predicated in part on conversations intercepted through court-ordered surveillance, a finding that the surveillance was illegal would mandate suppression of the warrants and evidence acquired pursuant to their execution as the tainted product of that surveillance. D.C. Code §§ 23-541(9), 23-547(a)(2)(D), 23-551(b); 18 U.S.C. §§ 1955, 2518(1)(b)(iv). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

§ 23-548. Additional procedure for approval of interception of wire or oral communications.

(a) Notwithstanding any other provision of this subchapter, any investigative or law enforcement officer, specially designated by the United States attorney for the District of Columbia, who reasonably determines that —

(1) an emergency situation exists with respect to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing the interception can with due diligence be obtained, and

(2) there are grounds upon which an order could be entered under this subchapter to authorize interception, may intercept the wire or oral communication if an application for an order approving the interception is initiated in accordance with this section within twelve hours and is completed within seventy-two hours after the interception has occurred, or begins to occur. In the absence of an order, the interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event the application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this subchapter, and an inventory shall be served as provided for in section 23-550 on the person named in the application.

(b) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized by this subchapter, intercepts wire or oral communications relating either to offenses other than those specified in the order of authorization or to offenses other than those offenses for which interception was made pursuant to subsection (a) of this section, he shall make an application to a judge as soon as practicable

for approval for disclosure and use, in accordance with section 23-553, of the information intercepted.

(July 29, 1970, 84 Stat. 623, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in §§ 23-550, 23-555 and 23-556.

Prior Codifications. — 1981 Ed., § 23-548. 1973 Ed., § 23-548.

CASE NOTES

ANALYSIS

Authorization.

Conventional techniques.

Expectation of privacy.

Identity of person to be surveilled.

Notice and disclosure of surveillance.

Other offenses.

Authorization.

When police seek to invade, surreptitiously and without consent, protected premises to install, maintain, or remove electronic surveillance devices, prior judicial authorization in form of valid warrant authorizing that invasion must be obtained. 18 U.S.C. §§ 2510-2520, 2518(7); D.C. Code § 23-548; U.S.Ct. of App. D.C.Cir. Rule 8(g), 18 U.S.C.; U.S. Const. Amend. 4. *United States v. Ford*, 553 F.2d 146, 1977 U.S. App. LEXIS 10084 (C.A.D.C. 1977).

Statutory procedures for instituting electronic surveillance must be strictly construed; however, judicial approval orders should be analyzed in a common sense and realistic fashion. D.C. Code § 23-548(b). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Conventional techniques.

Under both federal and District of Columbia wiretapping statutes, wiretapping authorization would be defective for failure to make further conventional investigations only where such investigations might obviate wiretap itself. D.C. Code § 23-547(a)(3), (c)(3); 18 U.S.C. § 2518(1)(c), (3)(c). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Expectation of privacy.

Defendants, who forcibly took over three buildings without permission and held hostages for several days, could not have had a legitimate expectation of privacy, protected by the Fourth Amendment, against seizure of their telephone conversations by electronic surveillance on the premises; nor, in any event, did they have any such subjective expectation. D.C. Code § 23-548(a); U.S. Const. Amend. 4. *Khaalis v. United States*, 408 A.2d 313, 1979

D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

Identity of person to be surveilled.

Under the circumstances, omission of defendants' names as targets of wiretap from application and court order approving wiretap did not violate District of Columbia wiretapping statute. D.C. Code § 23-547(a)(2)(D), (e)(1). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Under federal and District of Columbia wiretapping statutes, application and court order authorizing wiretap must identify persons whose conversations are likely to be intercepted only when there is also probable cause to believe that they are committing offense for which wiretap is sought. D.C. Code § 23-547(a)(2)(D), (e)(1); 18 U.S.C. § 2518(1)(b)(iv), (4)(a). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Notice and disclosure of surveillance.

District of Columbia wiretapping statute requires no more than reasonable effort to reach persons whose conversations have been intercepted in authorized wiretap. D.C. Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Sending registered letter to address where telephone was registered in defendant's name constituted adequate compliance with District of Columbia wiretapping statutory provision that inventory notice be given to certain persons whose calls have been intercepted. D.C. Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Defendants' receipt of actual notice of wiretap was bar to any suppression argument based

on noncompliance with inventory requirement of District of Columbia wiretapping statute, at least where failure to give formal notice was not deliberate act of either court or Government. D.C. Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Other offenses.

Where affidavit accompanying application for extension of wiretap clearly informed judge of interception of evidence relating to offenses for which defendants were subsequently prosecuted, prior wiretap application contained Government's clear statement of its intention to seek federal indictments, and heroin and cocaine trafficking in violation of local statute was very similar to federal crime of trafficking in a nonnarcotic drug, failure to obtain separate judicial authorization for wiretap to gather information relating to federal crime of trafficking in a nonnarcotic drug did not require suppression of intercepted communications. D.C. Code 1981, § 23-548(b); Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a), 403(b), 406, as amended, 21 U.S.C. §§ 841(a), 843(b), 846. *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

Under federal wiretapping statute, Government was not required to apply for judicial permission to use fruits of narcotics wiretap in seeking authorization for further telephone surveillance relating to gambling. 18 U.S.C. § 2517(5). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Where wiretap applications and orders concerned gambling offenses for which the District of Columbia statute permitted court-authorized installation of electronic surveillance equipment, and evidence was intercepted which not only related to such offenses but also established probable cause to believe federal gambling offenses were being committed, metropolitan police department officers' disclosure of such evidence to FBI was not within contemplation of District of Columbia statute requiring officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use. D.C. Code §§ 23-546(c), 23-548(b), 23-553. *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

When metropolitan police department officers intercept conversations relating to offenses

specified in order of authorization, District of Columbia statute requiring officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use is not operative, and officers may disclose or use those conversations to extent that such disclosure or use is appropriate to the proper performance of their official duties. 18 U.S.C. § 2517(5); D.C. Code §§ 22-1501, 22-1505, 23-546(c)(1), 23-548(b). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Even if metropolitan police department officers' disclosure of evidence concerning District of Columbia gambling offenses to FBI was within contemplation of District of Columbia statute requiring an officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use, requirement of court authorization was met where evidence obtained by metropolitan police and divulged to FBI was evidence which judges who issued wiretap orders clearly anticipated would be obtained and disclosed. D.C. Code §§ 23-548(b), 23-553(a); 18 U.S.C. § 1955(b)(i-iii), (c). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

District of Columbia statute requiring officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use was designed to deter abuse of wiretapping procedures by guaranteeing that the original order was lawfully obtained and executed, and that it was sought in good faith and not merely as a subterfuge, search for evidence relating to other crimes. D.C. Code § 23-548(b). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Where gambling paraphernalia seized pursuant to search and arrest warrants would have been lawfully seized even if metropolitan police department officers' disclosure of surveillance data to FBI had been violative of District of Columbia statute requiring officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use, and this evidence was sufficient to sustain defendant's conviction, any noncompliance with such statute was harmless error. D.C. Code § 23-548(b). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

§ 23-549. Maintenance and custody of records.

(a) The contents of any wire or oral communication intercepted by any means authorized by this subchapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subchapter shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsection (a) of section 23-553, for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (b) of section 23-553.

(b) Applications made and orders granted under this subchapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of court.

(July 29, 1970, 84 Stat. 624, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in §§ 23-551 and 23-556.

Prior Codifications. — 1981 Ed., § 23-549. 1973 Ed., § 23-549.

CASE NOTES**Delay in sealing.**

Government provided satisfactory explanation for delay of four days in arranging for judicial sealing of evidence obtained from listening device. 18 U.S.C. § 2518(8)(a); D.C. Code 1981, § 23-549(a). *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Where tapes obtained as result of wiretap

were placed in a police vault in a condition that guaranteed their integrity, four-and-one-half day delay in judicially sealing tapes due to unavailability of motion judge at time seal was sought was not a ground for suppression of tapes. D.C. Code 1981, §§ 23-549(a), 23-551(b)(5). *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

§ 23-550. Inventory.

Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 23-548 which is denied, or the termination of the period of any order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine, in his discretion, are necessary in the interest of justice, an inventory which shall include notice of —

- (1) the fact of the entry of the order or the application for an order of approval which was denied;
- (2) the date of the entry of the order or the denial of the application for an order of approval;
- (3) the period of authorized, approved, or disapproved interception; and
- (4) whether during the period wire or oral communications were intercepted.

The judge, upon the filing of a motion, may in his discretion make available to the person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interests of justice. On an ex parte showing of good cause to a judge, the serving of the inventory required by this subsection may be postponed.

(July 29, 1970, 84 Stat. 624, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in §§ 23-548, 23-551 and 23-556.

Prior Codifications. — 1981 Ed., § 23-550. 1973 Ed., § 23-550.

CASE NOTES

Notice and disclosure of surveillance.

District of Columbia wiretapping statute requires no more than reasonable effort to reach persons whose conversations have been intercepted in authorized wiretap. D.C. Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Sending registered letter to address where telephone was registered in defendant's name constituted adequate compliance with District of Columbia wiretapping statutory provision that inventory notice be given to certain persons whose calls have been intercepted. D.C.

Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Defendants' receipt of actual notice of wiretap was bar to any suppression argument based on noncompliance with inventory requirement of District of Columbia wiretapping statute, at least where failure to give formal notice was not deliberate act of either court or Government. D.C. Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

§ 23-551. Procedure for disclosure and suppression of intercepted wire or oral communications.

(a) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States or the District of Columbia unless not less than ten days before the trial, hearing, or proceeding —

- (1) the inventory as provided in section 23-550 has been served; and
- (2) the parties to the action have been served with a copy of the order and accompanying application under which the interception was authorized or approved.

This ten-day period may be waived by court order where a court finds that it was not possible to furnish the party with the above information ten days

before the trial hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(b) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States or the District of Columbia, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that —

(1) the communication was unlawfully intercepted;

(2) the order of authorization or approval under which it was intercepted is insufficient on its face;

(3) the interception was not made in conformity with the order of authorization or approval;

(4) service was not made as provided in section 23-547; or

(5) the seal prescribed by section 23-549(a) is not present and there is no satisfactory explanation for its absence.

The motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this subchapter and shall not be received in evidence in the trial, hearing, or proceeding. The judge, upon the filing of the motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(July 29, 1970, 84 Stat. 624, Pub. L. 91-358, title II, § 210(a); Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(c).)

Section references. — This section is referred to in §§ 23-552 and 23-556.

Prior Codifications. — 1981 Ed., § 23-551. 1973 Ed., § 23-551.

CASE NOTES

ANALYSIS

Construction and application.
Notice and disclosure to parties.
Sealing.
Standing.
Tainted evidence.
Waiver of objections.

Construction and application.

Remedy of suppression of electronically obtained evidence is warranted only when government fails to satisfy any of the statutory requirements that directly and substantially implement congressional intention to limit use of intercept procedures to those situations clearly calling for employment of this extraordinary investigative device. 18 U.S.C. §§ 2510-2520. *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Communications which were intercepted pursuant to wiretap which was authorized on basis of application which failed to disclose previous wiretap authorization directed against one of the individuals under investigation were "unlawfully intercepted" within meaning of statute which provides for suppression of communications which are unlawfully intercepted. 18 U.S.C. § 2518(10)(a); D.C. Code § 23-551(b). *U.S. v. Belloso*, 501 F.2d 833, 1974 U.S. App. LEXIS 7897 (C.A.D.C. 1974).

Notice and disclosure to parties.

District of Columbia wiretapping statute requires no more than reasonable effort to reach persons whose conversations have been intercepted in authorized wiretap. D.C. Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S.

Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Sending registered letter to address where telephone was registered in defendant's name constituted adequate compliance with District of Columbia wiretapping statutory provision that inventory notice be given to certain persons whose calls have been intercepted. D.C. Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Defendants' receipt of actual notice of wiretap was bar to any suppression argument based on noncompliance with inventory requirement of District of Columbia wiretapping statute, at least where failure to give formal notice was not deliberate act of either court or Government. D.C. Code § 23-550. *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

Sealing.

Government provided satisfactory explanation for delay of four days in arranging for judicial sealing of evidence obtained from listening device. 18 U.S.C. § 2518(8)(a); D.C. Code 1981, § 23-549(a). *United States v. Robinson*, 698 F.2d 448, 1983 U.S. App. LEXIS 27891 (C.A.D.C. 1983).

Where tapes obtained as result of wiretap were placed in a police vault in a condition that guaranteed their integrity, four-and-one-half day delay in judicially sealing tapes due to unavailability of motion judge at time seal was sought was not a ground for suppression of tapes. D.C. Code 1981, §§ 23-549(a), 23-551(b)(5). *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

Standing.

Before an accused may be heard to complain that prosecution evidence should be suppressed because it was come by illegitimately, he must first make out his standing which generally entails a demonstration that his own interests were affected by challenged search or seizure. U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

With particular regard to electronic eavesdropping, an accused seeking to demonstrate that his own interests were affected by challenged search or seizure must show that it was directed at him, that the Government intercepted his conversations or that the wiretap communications occurred at least partly on his

premises; unless he can establish one of these events, it is legally irrelevant that the surveillance was unlawful, even if acquisition of the questioned evidence was not the direct result of unlawful conduct but instead was the fruit of the proverbial poisonous tree. 18 U.S.C. § 2518; U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

A denial by the Government that the accused has been victimized by an unlawful electronic eavesdropping must generally be accepted as conclusive when the accused seeks to establish his standing to complain that the evidence should be suppressed because it was come by illegitimately. 18 U.S.C. §§ 2518, 3504; U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

Defendants failed to establish their standing to challenge any taint in electronic intercepts stemming from prior unlawful wiretaps where, in light of the Government's positive denial that the defendants were victimized by the prior unlawful wiretaps, defendants failed to carry the threshold burden of demonstrating that any of their conversations were intercepted, and they urged neither of the other two traditional grounds of entitlement to records in wiretap communications for use at a taint hearing, namely, that the prior misconduct made possible an interception of their conversations or a breach of the privacy of their premises. 18 U.S.C. §§ 2518, 3504; U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

Tapes and transcripts of prior unlawful wiretaps could not be provided to defendants to enable them to traverse the Government's denial that any of the defendants' conversations were intercepted since the denial was conclusive and the defendants, therefore, failed to carry their threshold burden of demonstrating interception. 18 U.S.C. §§ 2518, 3504; U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

All persons whose telephone conversations were intercepted pursuant to wiretap which was authorized on basis of application which failed to disclose that one of the persons under investigation had previously been the subject of a wiretap had standing to seek suppression of the intercepted communication. 18 U.S.C. § 2518(10)(a); D.C. Code § 23-551(b). U.S. v.

Belloso, 501 F.2d 833, 1974 U.S. App. LEXIS 7897 (C.A.D.C. 1974).

Those two defendants who were parties to intercepted conversations, which occurred subsequent to defendants' take-overs of three buildings, did not have standing under District of Columbia statute to challenge the wiretaps, since those defendants, as trespassers, were not "aggrieved persons." D.C. Code §§ 23-541(9), 23-551(b). *Khaalis v. United States*, 408 A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

Tainted evidence.

It was incumbent on each defendant, seeking to contend that earlier unlawful wiretaps tainted later ones at two locations as well as evidence therefrom, to show that prior misconduct made possible an interception of his conversations or a breach of privacy of his premises. 18 U.S.C. § 2518; U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

Where it is unquestioned that there has been electronic eavesdropping and that it was unlawful, pertinent response from the Government is one indicating whether accused himself was victimized thereby; if the Government answers in the affirmative, accused is entitled to examine the records incorporating the contents of any monitored conversation that he has standing to attack. 18 U.S.C. §§ 2518, 3504; U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

When the Government responds in the affirmative to question whether there has been unlawful electronic eavesdropping and whether the accused himself was victimized thereby, the accused may demand records only of the mon-

itoring of his own conversations, implicating his own premises or aimed at him. 18 U.S.C. §§ 2518, 3504; U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

To facilitate an accused's effort to demonstrate that evidence employable against him is contaminated by illegal surveillance previously conducted, the Government, upon request, must affirm or deny the occurrence of the alleged unlawful act. 18 U.S.C. §§ 2518, 3504; U.S. Const. Amend. 4. *United States v. Williams*, 580 F.2d 578, 1978 U.S. App. LEXIS 11725 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127, 1978 U.S. LEXIS 2712 (1978).

Where gambling paraphernalia which constituted evidence concerning a violation of federal gambling statute were obtained solely through execution of search and arrest warrants predicated in part on conversations intercepted through court-ordered surveillance, a finding that the surveillance was illegal would mandate suppression of the warrants and evidence acquired pursuant to their execution as the tainted product of that surveillance. D.C. Code §§ 23-541(9), 23-547(a)(2)(D), 23-551(b); 18 U.S.C. §§ 1955, 2518(1)(b)(iv). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Waiver of objections.

Under federal and District of Columbia wiretapping statutes, failure to raise objection before trial to admission of wiretap communications waived right to object to admission of such evidence, in absence of evidence that defendants had no opportunity to make suppression motion or that they were not aware of grounds of motion. 18 U.S.C. § 2518(10)(a). *United States v. Johnson*, 539 F.2d 181, 1976 U.S. App. LEXIS 8450 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1061, 97 S. Ct. 784, 50 L. Ed. 2d 776, 1977 U.S. LEXIS 414 (1977).

§ 23-552. Government appeals.

In addition to any other right to appeal, the United States or the District of Columbia, as the case may be, shall have the right to appeal from an order granting a motion to suppress made under section 23-551 or from the denial of an application for an order of approval, if the United States or the District of Columbia, as the case may be, shall certify to the judge or other official granting such motion or denying the application that the appeal is not taken for purposes of delay. Appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(July 29, 1970, 84 Stat. 625, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in § 23-556.

Prior Codifications. — 1981 Ed., § 23-552. 1973 Ed., § 23-552.

§ 23-553. Authorization for disclosure and use of intercepted wire or oral communications.

(a) Any investigative or law enforcement officer who, by any authorized means and in conformity with this subchapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose or use such contents or evidence to the extent that such disclosure or use is appropriate to the proper performance of his official duties.

(b) Any person who, by any authorized means and in conformity with this subchapter, has obtained knowledge of the contents of any wire or oral communication intercepted in accordance with this subchapter, or other lawful authority, or evidence derived therefrom, may disclose the contents of such communication or evidence while giving testimony under oath or affirmation in any criminal trial, hearing, or proceeding before any grand jury or court.

(c) The contents of any wire or oral communication intercepted in conformity with this subchapter, or evidence derived therefrom, may otherwise be disclosed or used only by court order upon a showing of good cause.

(July 29, 1970, 84 Stat. 625, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in §§ 23-548, 23-549 and 23-556.

Prior Codifications. — 1981 Ed., § 23-553. 1973 Ed., § 23-553.

CASE NOTES

Other offenses.

Where wiretap applications and orders concerned gambling offenses for which the District of Columbia statute permitted court-authorized installation of electronic surveillance equipment, and evidence was intercepted which not only related to such offenses but also established probable cause to believe federal gambling offenses were being committed, metropolitan police department officers' disclosure of such evidence to FBI was not within contemplation of District of Columbia statute requiring officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use. D.C. Code §§ 23-546(c), 23-548(b), 23-553. *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

Even if metropolitan police department officers' disclosure of evidence concerning District of Columbia gambling offenses to FBI was within contemplation of District of Columbia statute requiring an officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use, requirement of court authorization was met where evidence obtained by metropolitan police and divulged to FBI was evidence which judges who issued wiretap orders clearly anticipated would be obtained and disclosed. D.C. Code §§ 23-548(b), 23-553(a); 18 U.S.C. § 1955(b)(i-iii), (c). *United States v. Moore*, 513 F.2d 485, 1975 U.S. App. LEXIS 14534 (C.A.D.C. 1975), vacated without op. by 556 F.2d 77 (D.C. Cir. 1977).

§ 23-554. Authorization for recovery of civil damages.

(a) Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this subchapter shall —

(1) have a civil cause of action against any person who intercepts,

discloses, or uses, or procures any other person to intercept, disclose, or use, such communications; and

(2) be entitled to recover from any such person —

(A) actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation, or \$1,000 whichever is higher;

(B) punitive damages; and

(C) a reasonable attorney's fee and other litigation costs reasonably incurred.

(b) Good faith reliance on a court order or legislative authorization shall constitute a complete defense to an action brought under this section or any other law.

(c) As used in this section, the term "person" includes the District of Columbia. The District of Columbia shall not assert any governmental immunity to avoid liability under this section. Judgment against the District of Columbia shall not constitute a bar to action against any other person.

(July 29, 1970, 84 Stat. 626, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Return of property by Property Clerk, see § 5-119.06.

Section references. — This section is referred to in § 23-556.

Prior Codifications. — 1981 Ed., § 23-554. 1973 Ed., § 23-554.

§ 23-555. Reports concerning intercepted wire or oral communications.

(a) Within thirty days after the expiration of an order or an extension entered under section 23-547 or 23-548 or the denial of an order of approval, the issuing or denying court shall report to the chief judge of the District of Columbia Court of Appeals —

(1) that an order or extension was applied for;

(2) the kind of order or extension applied for;

(3) if the order or extension was granted as applied for, was modified, or was denied;

(4) the period of the interceptions authorized by the order, and the number and duration of any extensions of the order;

(5) the offense specified in the order or application, or extension of an order;

(6) the identity of the applying investigative or law enforcement officer, the agency making the application, and the person authorizing the application; and

(7) the character and location of the facilities from which and the place where communications were (and were to be) intercepted.

(b) In January of each year the United States Attorney for the District of Columbia shall report to the Congress of the United States and the chief judge of the District of Columbia Court of Appeals —

(1) the information required by paragraphs (1) through (7) of subsection (a) of this section with respect to each application for an order or extension made during the immediately preceding calendar year;

(2) a general description of the interceptions made under such order or extension, including —

(A) the approximate character and frequency of incriminating communications intercepted;

(B) the approximate character and frequency of other communications intercepted;

(C) the approximate number of persons whose communications were intercepted; and

(D) the approximate character, amount, and cost of the manpower and other resources used in the interceptions;

(3) the number of arrests resulting from interceptions made under such order or extension;

(4) the offenses for which the arrests were made;

(5) the number of trials resulting from such interceptions;

(6) the number of motions to suppress made with respect to such interceptions;

(7) the number of motions to suppress granted or denied;

(8) the number of convictions resulting from such interceptions;

(9) the offenses for which the convictions were obtained;

(10) a general assessment of the importance of the interceptions; and

(11) for purposes of comparison, the information required by paragraphs (2) through (10) of this subsection with respect to orders and extensions obtained in other preceding calendar years.

(c) Reports made pursuant to the section shall be made in accordance with regulations prescribed by the Director of the Administration Office of the United States Courts under section 2519(3) of Title 18, United States Code.

(July 29, 1970, 84 Stat. 626, Pub. L. 91-358, title II, § 210(a); June 3, 1997, D.C. Law 11-275, § 14(d), 44 DCR 1408.)

Section references. — This section is referred to in § 23-556.

Prior Codifications. — 1981 Ed., § 23-555.
1973 Ed., § 23-555.

Legislative history of Law 11-275. — For legislative history of D.C. Law 11-275, see Historical and Statutory Notes following § 23-523.

CASE NOTES

Suppression of evidence.

Suppression of fruits of electronic surveillance would be an inappropriate remedy for Government's violation of requirement that it

file annual reports on electronic surveillance. D.C. Code 1981, § 23-555(b). *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

§ 23-556. Relation to Federal law on wire interception and interception of oral communications.

(a) Sections 23-542, 23-543, 23-545 [repealed], 23-553, 23-554, and 23-555 of this subchapter shall be construed to supplement, and not to supersede or otherwise limit, the provisions of chapter 119 of Title 18, United States Code (relating to wire interception and interception of oral communications).

(b) Sections 23-546, 23-547, 23-548, 23-549, 23-550, 23-551, and 23-552 of

this subchapter shall be construed not to supersede or otherwise limit the provisions of chapter 119 of Title 18, United States Code, except in cases of irreconcilable conflict.

(July 29, 1970, 84 Stat. 627, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-556.
1973 Ed., § 23-556.

References in text. — Section 23-545, re-

ferred to in subsection (a) of this section, was repealed by the Act of October 15, 1970, 84 Stat. 931, Pub. L. 91-452, § 252.

CASE NOTES

Jurisdiction.

Federal district court did not lack jurisdiction to authorize electronic surveillance in an investigation of local offenses conducted solely by local officials. D.C. Code 1981, §§ 23-541(7), 23-547. *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

Where affidavit accompanying application for extension of wiretap clearly informed judge of interception of evidence relating to offenses for which defendants were subsequently prosecuted, prior wiretap application contained Government's clear statement of its intention to seek federal indictments, and heroin and co-

caine trafficking in violation of local statute was very similar to federal crime of trafficking in a nonnarcotic drug, failure to obtain separate judicial authorization for wiretap to gather information relating to federal crime of trafficking in a nonnarcotic drug did not require suppression of intercepted communications. D.C. Code 1981, § 23-548(b); Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a), 403(b), 406, as amended, 21 U.S.C. §§ 841(a), 843(b), 846. *United States v. Johnson*, 696 F.2d 115, 1982 U.S. App. LEXIS 23137 (C.A.D.C. 1982).

Subchapter IV. Arrest Warrant and Summons.

§ 23-561. Issuance, form, and contents.

(a)(1) A judicial officer may issue a warrant for the arrest of any person upon a sworn complaint which states facts constituting an offense over which the judicial officer has jurisdiction for trial or preliminary examination, and establishing probable cause to believe that the person committed the offense. More than one warrant may issue on the same complaint.

(2) Upon request of the prosecutor, a summons shall issue instead of an arrest warrant. More than one summons may issue on the same complaint. If a person fails to appear in response to a summons, a warrant shall issue for his arrest.

(b)(1) An arrest warrant shall be signed by the judicial officer and shall state or contain the name of the issuing court, the date of issuance of the warrant, a description of the offense charged, and the name of the person to be arrested or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall command that the person be arrested and brought before the issuing court or officer.

(2) A summons shall be in the same form as an arrest warrant except that it shall summon the person named to appear before the issuing court or officer at a stated time and place.

(c) An arrest warrant may be directed to a specific law enforcement officer or to any classifications of officers of the Metropolitan Police of the District of Columbia or other agency authorized to make arrests or execute process.

(d) Each complaint shall be made in writing upon oath or affirmation.

Except for good cause shown, no warrant shall be issued unless the complaint has been approved by an appropriate prosecutor.

(July 29, 1970, 84 Stat. 627, Pub. L. 91-358, title II, § 210(a); Oct. 26, 1974, 88 Stat. 1456, Pub. L. 93-481, § 4(e).)

Prior Codifications. — 1981 Ed., § 23-561. 1973 Ed., § 23-561.

CASE NOTES

Detainers.

Arrest warrant will serve as detainer, within purview of Interstate Agreement on Detainers (IAD), if it is based on untried information, indictment or complaint, it is filed by criminal justice agency, it is filed directly with facility where prisoner is incarcerated, it notifies prison officials that prisoner is wanted to face pending charges, and it asks prison either to hold prisoner at conclusion of his sentence, or to notify agency officials when prisoner's release is imminent. D.C. Code 1981, § 24-701 et seq. *Tucker v. United States*, 569 A.2d 162, 1990 D.C. App. LEXIS 12 (1990).

Where it is unclear whether arrest warrant was lodged as "detainer," within meaning of Interstate Agreement on Detainers, court employs "functional analysis," under which it determines whether officials intended warrant to serve as detainer and whether defendant suf-

fered any prejudice during his incarceration on account of warrant. D.C. Code 1981, § 24-701 et seq. *Tucker v. United States*, 569 A.2d 162, 1990 D.C. App. LEXIS 12 (1990).

District of Columbia arrest warrants left with local South Carolina police by District officers who had interviewed defendant following his arrest on South Carolina charges did not constitute detainers under Interstate Agreement on Detainers, for purpose of triggering speedy trial provisions of that statute, though warrants were ultimately placed in defendant's South Carolina prison records, District officials did not intend that warrants, provided as courtesy to local officers, be lodged as detainers and there was no showing that existence of warrants in defendant's prison file prejudiced him. D.C. Code 1981, § 24-701, Art. III(a). *Tucker v. United States*, 569 A.2d 162, 1990 D.C. App. LEXIS 12 (1990).

§ 23-562. Execution and return.

(a)(1) A warrant issued pursuant to this subchapter shall be executed by the arrest of the person named. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the person as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall inform the person of the offense charged and of the fact that a warrant has been issued.

(2) A summons shall be served upon a person by delivering a copy to him personally, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the person's last known address.

(b)(1) The officer executing a warrant shall make return thereof to the judicial officer before whom the person is brought for preliminary examination. At the request of the appropriate prosecutor, any unexecuted and unexpired warrant shall be returned to the issuing court or judicial officer and shall be canceled.

(2) On or before the return day the person to whom a summons was delivered for service shall make return thereof to the court or officer before whom the summons is returnable.

(3) At the request of the appropriate prosecutor made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or expired or a summons returned unserved or a duplicate thereof may be

delivered by the judicial officer to the marshal or other authorized person for execution or service.

(c)(1) A law enforcement officer within the District of Columbia making an arrest under a warrant issued pursuant to this subchapter, making an arrest without a warrant, or receiving a person arrested by a special policeman or other person pursuant to § 23-582, or a designated civilian employee of the Metropolitan Police Department receiving a person arrested by a law enforcement officer within the District of Columbia or a special policeman or other person pursuant to § 23-582, shall take the arrested person without unnecessary delay before the court or other judicial officer empowered to commit persons charged with the offense for which the arrest was made. This subsection, however, shall not be construed to conflict with or otherwise supersede section 3501 of Title 18, United States Code. When a person arrested without a warrant is brought before a judicial officer, a complaint or information shall be filed forthwith.

(2) Before taking an arrested person to a judicial officer, a law enforcement officer or a designated civilian employee of the Metropolitan Police Department, may perform any recording, fingerprinting, photographing, or other preliminary police duties required in the particular case, and if such duties are performed with reasonable promptness, the period of time required therefor shall not constitute a delay within the meaning of this section.

(July 29, 1970, 84 Stat. 628, Pub. L. 91-358, title II, § 210(a); June 12, 1999, D.C. Law 12-284, § 8(b), 46 DCR 1328.)

Cross references. — Execution of warrants by police force, see § 5-127.05.

Prior Codifications. — 1981 Ed., § 23-562. 1973 Ed., § 23-562.

Temporary Amendment of Section. — Section 8(b) of D.C. Law 12-282 inserted “or a designated civilian employee of the Metropolitan Police Department receiving a person arrested by a law enforcement officer within the District of Columbia or a special policeman or other person pursuant to § 23-582 [1981 Ed.]” in (c)(1); and in (c)(2), inserted “or a designated civilian employee of the Metropolitan Police Department.”

Section 13(b) of D.C. Law 12-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 8(b) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 8(b) of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, No-

vember 10, 1998, 45 DCR 45 8139), and § 8(b) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 12-282. — Law 12-282, the “Metropolitan Police Department Civilianization Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-709. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-282 became effective on May 28, 1999.

Legislative history of Law 12-284. — Law 12-284, the “Metropolitan Police Department Civilianization Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-710, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-284 became effective on June 12, 1999.

CASE NOTES

ANALYSIS

Charge.

Counsel for accused.

Custody and disposition of prisoner.

—Arrest reports, custody and disposition of prisoner.

—Bail, custody and disposition of prisoner.

—In general.

—Presentment to magistrate, custody and disposition of prisoner.

Entry.

Miranda warnings.

Charge.

A policeman making an arrest need not immediately advise the prisoner of the specific section of the statute or regulation he is charged with violating; the policeman on the scene cannot be expected to assay the evidence with the technical precision of a prosecutor drawing an information; for example, a person arrested for disorderly conduct may eventually be charged with conspiracy to riot but his arrest is not to be vitiated merely because the arresting officer advised him that he was being arrested for the former. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Counsel for accused.

Person does not have the right to counsel at the time of booking or collateral release; those events are not interrogative stages of the criminal process but merely administrative prerequisite. Fed.Rules Crim.Proc. rule 44(a), 18 U.S.C.; D.C. Code § 23-562(c)(1). *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

Custody and disposition of prisoner.**— Arrest reports, custody and disposition of prisoner.**

Rebuttable presumption that an arrest not accompanied by a field arrest form is invalid did not justify sweeping prohibition of any and all mass arrests of antiwar protestors without completion of field arrest forms; probable cause could exist even though evidence thereof was not recorded at time of arrest. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Mass arrests of demonstrators by District of Columbia police officers were not invalid for failure to contemporaneously complete field arrest forms or other procedures for recording information necessary to establish probable

cause; if all members of a group are arrested the prosecutor may be able to prove, by testimony of on-the-scene policemen, that there was probable cause to believe that the group as a whole was violating the law by violence or obstruction or by remaining on the scene after reasonable notice and opportunity to disperse. D.C. Code § 22-1121(2). *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Although following arrest and prior to presentment before a magistrate the police are entitled to fill out an arrest report and search the arrestee and restrain his movement so that he cannot destroy evidence, as soon as such needs are fulfilled in an efficient way the Fourth Amendment requires that the individual be presented to a magistrate. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

— Bail, custody and disposition of prisoner.

Police department's policy of not allowing attorneys or representatives of organizations to post collateral for detainees who had been arrested during demonstrations but whom the attorneys could not identify in advance was an unnecessary delay in effectuating the release of the arrestees. D.C. Code § 23-562(c)(1). *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

Right of an arrestee to post collateral should be read in conjunction with the requirement that a person arrested with or without warrant be taken before a court or magistrate without unnecessary delay; booking and collateral release of a detainee should proceed without any unnecessary delays. Fed.Rules Crim.Proc. rule 5, 18 U.S.C.; D.C. Code § 23-562(c)(1). *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

— In general.

Period of detention that is "reasonable" between arrest and booking and collateral-posting process varies with the circumstances. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Although average time to process an arrestee should normally take no longer than one-and-one-half hours, a police officer could take a greater length of time to process an arrestee before presenting him to a magistrate and still

be acting within constitutional bounds. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Fact that the police meet minimum standards for delay between arrest and presentment of arrestee before a magistrate does not automatically ensure that the police have not unconstitutionally detained an arrestee before presentment. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Standard determinative of whether processing procedures following arrest and prior to presentment to a magistrate pass constitutional muster is whether they lead to the detainment of the arrestee only so long as needed to complete the administrative steps incident to arrest. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

After a reasonable period necessary to complete administrative steps incident to arrest and prior to presentment of arrestee to a magistrate the core guarantee of the Fourth Amendment moves into the foreground and the individual arrested must be brought before a judicial officer to determine if probable cause exists to believe that a crime has been committed by him. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Delay between arrest and presentment of arrestee to a magistrate can be justified only by a strong showing that it is necessitated by a substantial administrative need. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Unreasonable delay between arrest and presentment to a magistrate occurred where delay was partly due to completion of a number of forms which called for information that could have been collected from original arrest report, procedures for fingerprinting and photographing were inefficient and such procedures could have been undertaken following presentment, department failed to assign additional officers to fingerprinting unit during peak periods, police trainees were given no guidelines as to how long to take to process an arrestee and experienced officer stated it would normally take one hour for processing but it took over six hours to process 40% of arrestees. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Where from individual police reports or similar reports the police could derive the same type of information as obtained from prepresentment lineup, such lineup was not an administrative step necessary for police record-keeping incident to arrest and prior to presentment and, hence, was unconstitutional. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F.

Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Mere fact that persons who were arrested during mass arrests attendant to demonstration spent hours in detention, often in inconvenient circumstances, before being processed and released did not, of itself, compel the conclusion that the police were unnecessarily dilatory; police would not be required to adhere to a two-hour time limit on collateral release in the future. Fed.Rules Crim.Proc. rule 5, 18 U.S.C.; 18 U.S.C. § 3501; D.C. Code § 23-562(c)(1, 2). *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

— Presentment to magistrate, custody and disposition of prisoner.

The essential reason the detached judgment of a judicial officer is needed to detain an individual beyond the critical "stop and frisk" or processing steps incident to arrest is that a judicial officer belongs to a branch of the government different than the police who are charged with investigating crime. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Although arrestees who are released on citation, bond or forfeitable collateral never need be presented before a magistrate, unless such alternatives are available promptly to those arrestees detained for processing, their detention would violate the Fourth Amendment. U.S. Const. Amend. 4. *Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Entry.

Arrest warrant, issued under rule governing execution of arrest warrants, provides authority to enter any premises for purpose of enforcing warrant, if police officer has probable cause to believe that subject is located therein. Fed.Rules Crim.Proc. rule 4(c), 18 U.S.C. *United States v. Brown*, 467 F.2d 419, 1972 U.S. App. LEXIS 7572 (C.A.D.C. 1972).

Standards to be applied for execution of an arrest warrant at a residence of a third party not named in the warrant is reasonable belief of police officer that person named in the warrant is present in the third party's residence. Fed.Rules Crim.Proc. rule 4(b)(1), 18 U.S.C. *United States v. Brown*, 467 F.2d 419, 1972 U.S. App. LEXIS 7572 (C.A.D.C. 1972).

Where police officers, in attempting to execute warrant for arrest of usually armed suspect who was involved in narcotics and wanted for murder, saw two men enter apartment building of suspect's "number one girl friend" with a private key about 11:30 P.M., saw lights

in area of girl friend's apartment light up, waited from 11:00 P.M. to 5:00 A.M. in order to avoid armed resistance and then announced their presence three times, one of which informed the girl friend that they had a warrant for the suspect, before girl friend opened her door, such officers had probable cause to enter the apartment and search for the suspect and to require girl friend to open the door even without their having a search warrant, and constitutionally protected interest of privacy was not unreasonably impaired. Fed.Rules Crim.Proc. rules 4(b)(1), (c), 41, 18 U.S.C. United States v. Brown, 467 F.2d 419, 1972 U.S. App. LEXIS 7572 (C.A.D.C. 1972).

Where police have a warrant to arrest someone whom they have reason to believe is involved in a narcotics operation, sound of a toilet flushing, even at 5:00 A.M., is event which can be taken into account with respect to whether police acted reasonably in effecting entry and announcing that door will be forced if not opened. United States v. Brown, 467 F.2d 419, 1972 U.S. App. LEXIS 7572 (C.A.D.C. 1972).

In order to authorize entry into a person's home to execute a warrant for his arrest, the police officer's belief that the residence to be entered is the home of the person named in the warrant need not be supported by probable cause; rather, the proper inquiry is whether there is a reasonable belief that the suspect resides at the place to be entered to execute the warrant, and whether the officers have reason to believe that the suspect is present. Dockery v. United States, 853 A.2d 687, 2004 D.C. App. LEXIS 274 (2004).

Miranda warnings.

Miranda warnings, i.e., warnings of right to counsel and to remain silent, are required at commencement of questioning initiated by law enforcement officers after a person has been taken into custody; such warnings were not required at time of arrest, absent showing of any improper question of prisoner at scene of the arrest. Washington Mobilization Committee v. Cullinane, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Defendant was not in custody for Miranda purposes, even though police officer grabbed defendant by his shirt, escorted him out of hotel, and questioned him while officer and second officer stood on either side of him, each holding one of his arms; minutes before, it appeared that defendant was running from first officer, officers restrained defendant to prevent him from running again while they investigated marijuana odor that emanated from him, defendant was not handcuffed, placed into police vehicle, or told that he was under arrest, and no guns were drawn. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

Test of whether a person is in custody for Miranda purposes is whether under all of the circumstances a reasonable man innocent of any crime would have thought he was not free to leave. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

Ultimate inquiry in determining whether a person is in custody for Miranda purposes is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

"Custodial interrogation" under Miranda means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

Detective's statements to defendant while he was in custody that he was being charged with second-degree murder and that defendant's friend told police what happened were functional equivalent to express questioning for purposes of Miranda; defendant had been held incommunicado for over three hours, detective's statement that friend had told police what happened had effect of conveying to defendant that police had evidence of his guilt and was not responsive to defendant's preceding question of whether friend had been detained, and detective used classic interrogation techniques in establishing authority, confronting defendant with evidence against him, and creating verbal vacuum. Hill v. United States, 858 A.2d 435, 2004 D.C. App. LEXIS 426 (2004).

"Interrogation," for purposes of Miranda, broadly comprises both express questioning and any words or actions on the part of the police, other than those normally attendant to arrest and custody, that the police should know are reasonably likely to elicit an incriminating response from the suspect. Hill v. United States, 858 A.2d 435, 2004 D.C. App. LEXIS 426 (2004).

Burden is on the government to prove that an unwarned statement of a suspect in custody was voluntarily given without police coercion. Hill v. United States, 858 A.2d 435, 2004 D.C. App. LEXIS 426 (2004).

"Custodial interrogation" under Miranda means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. United States v. Little, 851 A.2d 1280, 2004 D.C. App. LEXIS 337 (2004).

Although the circumstances of each case must certainly influence the determination of whether defendant was in custody for Miranda purposes, the ultimate inquiry is simply whether there is a formal arrest or restraint on

freedom of movement of the degree associated with a formal arrest. *United States v. Little*, 851 A.2d 1280, 2004 D.C. App. LEXIS 337 (2004).

The ultimate inquiry as to whether defendant was in custody for Miranda purposes is whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest; this inquiry, in turn, requires two discrete determinations, including what the circumstances surrounding the interrogation were, and, given those circumstances, whether a reasonable person have felt he was not at liberty to terminate the interrogation and leave. *United States v. Little*, 851 A.2d 1280, 2004 D.C. App. LEXIS 337 (2004).

For purposes of a Miranda analysis, once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry as to whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *United States v. Little*, 851 A.2d 1280, 2004 D.C. App. LEXIS 337 (2004).

Murder defendant was "in custody" for Miranda purposes during his questioning by homicide detectives; defendant was questioned for several hours in interview room at homicide office, after having been frisked, he traveled to police station in back seat of police vehicle seated next to detective, and defendant certainly knew that police meant business, because he had watched them as they searched his home for guns, he knew that they wanted to question him about the murder, and he was shown a gun during interrogation. *United States v. Little*, 851 A.2d 1280, 2004 D.C. App. LEXIS 337 (2004).

A court examines the totality of the circumstances to determine whether a suspect is in custody for Miranda purposes, and its evaluation must be informed by the underlying purpose of the Miranda rule, namely to protect individuals from compelled self-incrimination. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Objective test is used to determine whether a suspect is in custody for Miranda purposes, determined by how a reasonable person in the suspect's position would have understood his

situation. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Custody is recognized for Miranda purposes when there is a formal arrest or restraint on freedom of movement of the degree associated with formal arrest. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Custody is imposed, and Miranda warnings are required, once the investigating officer physically deprives the suspect of his freedom of action in any significant way or, under the circumstances, leads him to believe, as a reasonable person, that he is so deprived. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Miranda requirements are only applicable when a suspect is in custody. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

If Miranda warnings are not given to a suspect in custody, any statements made by the suspect may be deemed inadmissible in evidence against him, regardless of whether they were given voluntarily; the record must show clearly that a defendant was given the entire series of warnings and that he knowingly and intelligently waived those rights before making any statements in response to custodial interrogation. *Fisher v. United States*, 779 A.2d 348, 2001 D.C. App. LEXIS 180 (2001), writ of certiorari denied by 534 U.S. 1095, 122 S. Ct. 844, 151 L. Ed. 2d 722, 2002 U.S. LEXIS 72, 70 U.S.L.W. 3428 (2002).

Defendant was not in custody at time his vehicle was stopped while traveling against the flow of traffic on a one-way street, and thus, no Miranda warnings were required. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

An individual who has been temporarily detained for a traffic stop generally is not considered to be "in custody" for purposes of Miranda. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

§ 23-563. Territorial and other limits.

(a) A warrant or summons for a felony under sections 16-1022 and 16-1024 or an offense punishable by imprisonment for more than one year issued by the Superior Court of the District of Columbia may be served at any place within the jurisdiction of the United States.

(b) A warrant or summons issued by the Superior Court of the District of Columbia for an offense punishable by imprisonment for not more than one year, or by a fine only, or by such imprisonment and a fine, may be served in any place in the District of Columbia but may not be executed more than one year after the date of issuance.

(c) A person arrested outside the District of Columbia on a warrant issued by the Superior Court of the District of Columbia shall be taken before a judge, commissioner, or magistrate, and held to answer in the Superior Court pursuant to the Federal Rules of Criminal Procedure as if the warrant had been issued by the United States District Court for the District of Columbia.

(d) When an application alleges that (1) an act which would constitute a felony if committed by an adult has been committed by a child, (2) the child may not with due diligence be found within the District of Columbia, and (3) if the District of Columbia is a party to article XVII of the Interstate Compact on Juveniles, the child is not known to be in a jurisdiction which is a party to such article, a juvenile officer may secure a warrant for the arrest of the child as if he were an adult. When the child is brought before the issuing court or officer pursuant to the warrant he shall be ordered transferred to the Family Division of the Superior Court pursuant to section 16-2302. If the child is found in a jurisdiction which is a party to such article and if the District of Columbia is a party to such article, he shall be returned as provided in that article and the warrant shall be null and void.

(July 29, 1970, 84 Stat. 628, Pub. L. 91-358, title II, § 210(a); Mar. 2, 2002, D.C. Law 14-73, § 2, 48 DCR 9578.)

Prior Codifications. — 1981 Ed., § 23-563. 1973 Ed., § 23-563.

Effect of amendments. — D.C. Law 14-73, in subsec. (a), inserted “a felony under sections 16-1022 and 16-1024” after “summons for”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Parental Kidnapping Extradition Emergency Amendment Act of 2001 (D.C. Act 14-113, August 3, 2001, 48 DCR 7647).

For temporary (90 day) amendment of section, see § 2 of Parental Kidnapping Extradition Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-137, October 23, 2001, 48 DCR 9918).

For temporary (90 day) amendment of section, see § 2 of Parental Kidnapping Extradition Congressional Review Emergency Amend-

ment Act of 2002 (D.C. Act 14-249, January 28, 2002, 49 DCR 1047).

Legislative history of Law 14-73. — Law 14-73, the “Parental Kidnapping Extradition Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-180, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 10, 2001, and September 19, 2001, respectively. Signed by the Mayor on October 2, 2001, it was assigned Act No. 14-134 and transmitted to both Houses of Congress for its review. D.C. Law 14-73 became effective on March 2, 2002.

References in text. — The Interstate Compact on Juveniles, referred to in the first sentence of subsection (d) of this section, is codified in §

CASE NOTES

ANALYSIS

Bail skipping.
Civil contempt.
Construction and application.
Detainers.
—Hearing rights, detainers.
—In general.

—Waiver of rights, detainers.
Parole and probation compact.

Bail skipping.

Bench warrants are not governed by the temporal limits of subsection (b) of this section, but rather are governed by § 23-1329, which sets forth no such time limit on the validity of

misdemeanor warrants. *United States v. Long*, 125 WLR 2369 (Super. Ct. 1997).

A warrant issued under § 23-1329 because of a defendant's failure to appear is a device by which a court restores to its custody a person who is already within its jurisdiction, i.e., one who has been arraigned and formally charged with an offense; those warrants are thus distinguishable from warrants issued under this section. *United States v. Long*, 125 WLR 2369 (Super. Ct. 1997).

Civil contempt.

Arrest warrant for father, based on adjudication of civil contempt for failure to comply with Superior Court's child support orders, could be served in Virginia; potential sanctions for civil contempt could exceed one year of imprisonment. D.C. Code 1981, § 23-563(b). *Desai v. Fore*, 711 A.2d 822, 1998 D.C. App. LEXIS 89 (1998).

Construction and application.

Any person arrested on a superior court warrant outside District of Columbia is treated, for purposes of removal to District, as if the warrant had been issued by the United States District Court for the District of Columbia. D.C. Code § 23-563(c); D.C. SCR Criminal Rule 5-I. *Hagans v. United States*, 408 A.2d 965, 1979 D.C. App. LEXIS 502 (1979).

Detainers.

— Hearing rights, detainers.

Defendants arrested in Maryland on a D.C. warrant were entitled to a removal hearing in Maryland before being brought into the District, pursuant to this section, Rule 5-1, Rules of Criminal Procedure, and Rule 40, Federal Rules of Criminal Procedure. *United States v. Washington*, 125 WLR 1053 (Super. Ct. 1997).

Absence of providing defendants with a hearing before deporting them to the District does not require suppression of statements made to District police officers; rather the violation is a factor in the court's analysis of whether the totality of circumstances renders the statements inadmissible. *United States v. Washington*, 125 WLR 1053 (Super. Ct. 1997).

— In general.

Rights conferred under the Interstate Agreement on Detainers Act are a matter of legislative grace; they can be rescinded as readily as they were granted. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code§ 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

A violation of the Interstate Agreement on Detainers Act is not recognizable as a claim of

lack of subject matter jurisdiction or failure to state an offense. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code§ 24-701 note; D.C. Code SCR, Criminal Rule 12(b)(2). *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Detainer is not a demand for immediate surrender of the prisoner, but only a request from the official lodging the detainer that he be notified before the inmate is released from custody. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

A prisoner who is being temporarily incarcerated pending disposition of charges is not entitled to invoke the protections of the Interstate Agreement on Detainers Act. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

— Waiver of rights, detainers.

Despite the seeming mandatory language of the Interstate Agreement on Detainers ordering dismissal of the charges if its provisions are violated, the courts have assumed that the rights conferred can be waived by a prisoner. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note; D.C. Code SCR, Criminal Rule 12. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Traditional standard for the waiver of constitutional rights does not apply to a waiver of a defendant's statutory rights under the Interstate Agreement on Detainers Act. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Absent "good cause shown," a failure to present a claim under the Interstate Agreement on Detainers Act at the trial level constitutes a waiver of those rights. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note; D.C. Code SCR, Criminal Rule 12(d). *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct.

2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

A violation of the Interstate Agreement on Detainers Act is a defense which is capable of determination without trial of the general issue; thus, it comes within that class of rights which must be asserted before trial or, at least, during the trial itself. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note; D.C. Code SCR, Criminal Rule 12(b). *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

A claim that the Interstate Agreement on Detainers Act has been violated should be raised at the earliest possible time before the witnesses and parties have gone to the burden and expense of a trial. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Defendants waived any right to dismissal of

their indictments under the Interstate Agreement on Detainers Act by not raising this issue by motion in the trial court, and, moreover, the rationale of the Agreement would not be furthered by dismissal of the indictments. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Parole and probation compact.

In limited circumstance when misdemeanor probationer's supervision is transferred to receiving state under Interstate Parole and Probation Compact, the Superior Court's arguably geographically limited authority for issuance of a misdemeanor warrant under subsection (b) of this section is irrelevant; insofar as the warrant is signed without territorial limitation directed to the United States Marshal, it constitutes a direction to an officer of this court to "apprehend and retake" a probationer under § 24-251(3) and must accordingly be so honored. *United States v. Hanna*, 114 WLR 1153 (Super. Ct. 1986).

Subchapter V. Arrest Without Warrant.

§ 23-581. Arrests without warrant by law enforcement officers.

(a)(1) A law enforcement officer may arrest, without a warrant having previously been issued therefor —

(A) a person who he has probable cause to believe has committed or is committing a felony;

(B) a person who he has probable cause to believe has committed or is committing an offense in his presence;

(C) a person who he has probable cause to believe has committed or is about to commit any offense listed in paragraph (2) and, unless immediately arrested, may not be apprehended, may cause injury to others, or may tamper with, dispose of, or destroy evidence; and

(D) a person whom he has probable cause to believe has committed any offense which is listed in paragraph (3) of this section, if the officer has reasonable grounds to believe that, unless the person is immediately arrested, reliable evidence of alcohol or drug use may become unavailable or the person may cause personal injury or property damage.

(2) The offenses referred to in subparagraph (C) of paragraph (1) are the following:

(A) The following offenses specified in the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, and listed in the following table:

Offense:

Assault
 Unlawful entry
 Malicious burning, destruction or injury of
 another's property

Specified in —

section 806 (D.C. Code, sec. 22-404).
 section 824 (D.C. Code, sec. 22-3302).
 section 848 (D.C. Code, sec. 22-303).

(B) The following offense specified in the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; 53 DCR 8610):

Offense:

Voyeurism

Specified in —

section 105 (D.C. Code, sec. 22-3531).

(C) The following offenses specified in the District of Columbia Theft and White Collar Crimes Act of 1982, and listed in the following table:

Offense:

Theft of property valued less than \$250 ...
 Receiving stolen property
 Shoplifting

Specified in —

section 111 [D.C. Official Code, § 22-3211].
 section 132 [D.C. Official Code, § 22-3232].
 section 113 [D.C. Official Code, § 22-3213].

(D) Attempts to commit the following offenses specified in the Act and listed in the following table:

Offense:

Theft of property valued in excess of \$250 .
 Unauthorized use of vehicles

Specified in —

section 111 [D.C. Official Code, § 22-3211].
 section 115 [D.C. Official Code, § 22-3215].

(E) The following offenses specified in the Illegal Dumping Enforcement Act of 1994 [Chapter 9 of Title 8], and listed in the following table:

Offense:

Unauthorized Disposal of Solid Waste

Specified in —

Section 3. [D.C. Official Code, § 8-902]

(F) The following offenses specified in section 113.7 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 113.7).

Offense:

Illegal construction

Specified in —

section 113.7 (12A DCMR § 113.7)

(3) The offenses which are referred to in paragraph (1)(D) of this section are the following offenses specified in the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01 et seq.), and listed in the following table:

Offense:

Reckless driving
 Fleeing from the scene of an accident
 Operating or physically controlling a vehicle
 when under the influence of intoxicating
 liquor or drugs, when operating ability is
 impaired by intoxicating liquor, or when
 the operator's blood, breath, or urine con-
 tains the amount of alcohol which is pro-
 hibited by section 10(b)

Specified in —

section 9(b) (D.C. Official Code § 50-
 2201.04(b))
 section 10(a) (D.C. Official Code § 50-
 2201.05(a))
 section 10(b) (D.C. Official Code § 50-
 2201.05(b))

Offense:

Operating a motor vehicle when the operator's permit is revoked or suspended . . .

Specified in —

section 13(e) (D.C. Official Code § 50-1403.01(e)).

(a-1) A law enforcement officer may arrest a person without an arrest warrant if the officer has probable cause to believe the person has committed an intrafamily offense as provided in section 16-1031(a).

(a-2) A law enforcement officer may arrest a person without an arrest warrant if the officer has probable cause to believe the person has committed an offense as provided in Chapter 23 of Title 22.

(a-3) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed an offense as provided in sections 22-3312.01, 22-3312.02, and 22-3312.03.

(a-4) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of unlawful entry of a motor vehicle as provided in [§ 22-1341].

(a-5) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of tampering with a detection device as provided in [§ 22-1211].

(a-6) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of engaging in an unlawful protest targeting a residence as provided in [§ 22-2752].

(a-7) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of misdemeanor sexual abuse or misdemeanor sexual abuse of a child or minor as provided in sections 22-3006 and 22-3010.0.

(b) A law enforcement officer may, even if his jurisdiction does not extend beyond the District of Columbia, continue beyond the District, if necessary, a pursuit commenced within the District of a person who has committed an offense or who he has probable cause to believe has committed or is committing a felony, and may arrest that person in any State the laws of which contain provisions equivalent to those of section 23-901.

(July 29, 1970, 84 Stat. 629, Pub. L. 91-358, title II, § 210(a); Dec. 1, 1982, D.C. Law 4-164, § 601(g), 29 DCR 3976; Aug. 2, 1983, D.C. Law 5-24, § 4, 30 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 7(d), 35 DCR 147; April 30, 1990, D.C. Law 8-261, § 3, 37 DCR 5001; May 5, 1992, D.C. Law 9-96, § 5, 38 DCR 7274; Nov. 17, 1993, D.C. Law 10-54, § 8, 40 DCR 5450; Feb. 5, 1994, D.C. Law 10-68, § 55(a), 40 DCR 6311; May 20, 1994, D.C. Law 10-117, § 8(c), 41 DCR 524; June 12, 2001, D.C. Law 13-309, § 3, 48 DCR 1613; Mar. 13, 2004, D.C. Law 15-105, § 93, 51 DCR 881; Oct. 18, 2005, D.C. Law 16-24, § 3, 52 DCR 8080; Dec. 10, 2009, D.C. Law 18-88, § 222, 56 DCR 7413; May 26, 2011, D.C. Law 18-374, § 4, 58 DCR 715; June 3, 2011, D.C. Law 18-377, § 15, 58 DCR 1174.)

Cross references. — Receiving stolen property, see § 22-3232.

Theft, see § 22-3211.

Unauthorized use of motor vehicles, see § 22-3215.

Section references. — This section is referred to in §§ 23-524 and 23-582.

Prior Codifications. — 1981 Ed., § 23-581. 1973 Ed., § 23-581.

Effect of amendments. — D.C. Law 13-309 added subsec. (a-3).

D.C. Law 15-105, in subsec. (a)(2)(E), validated a previously made technical correction.

D.C. Law 16-24 added subsec. (a)(2)(F).

D.C. Law 18-88, in subsec. (a)(2)(A), inserted “Malicious burning, destruction or injury of another’s property _____ .. section 848 (D.C. Official Code § 22-303).”; rewrote subsec. (a)(2)(B); and added subsecs. (a-4) and (a-5). Prior to amendment, subsec. (a)(2)(B) read as follows: “(B) Attempts to commit burglary as specified in section 823 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (D.C. Official Code, sec. 22-801).”

D.C. Law 18-374 added subsec. (a-6).

D.C. Law 18-377 added subsec. (a-7).

Temporary Amendment of Section. — Section 3 of D.C. Law 16-4 added subpar. (a)(2)(F) to read as follows: “(F) The following offenses specified in section 113.7 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 113.7; 51 DCR 371).

“Offense: Illegal construction Specified in § 113.7 (12A DCMR § 113.7).”

Section 6(b) of D.C. Law 16-4 provides that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Section 2 of D.C. Law 17-391 added a section to read as follows:

“Sec. 2. Tampering with detection device.

“(a) It shall be unlawful for a person who is required to wear a device as a condition of supervision pursuant to a protection order, pretrial, presentence, or predisposition release, probation, supervised release, parole, or commitment to remove or intentionally alter the device, or to intentionally interfere with or mask, or attempt to interfere with or mask, the operation of the device, or to allow any unauthorized person to remove or intentionally alter the device, or to intentionally interfere with or mask, or attempt to interfere with or mask, the operation of the device. For the purposes of this section, the term ‘device’ includes a bracelet, anklet, or other equipment equipped with electronic monitoring capability or global positioning system technology.

“(b) Whoever violates this section shall be fined not more than \$1,000, imprisoned for not more than 180 days, or both.”

Section 3 of D.C. Law 17-391 added subsec. (a-4) to read as follows:

“(a-4) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed an offense as provided in the GPS Anti-Tampering Emergency Act of 2008, passed on 2nd reading on January 6, 2009 (Enrolled version of Bill 17-1072).”

Section 5(a) of D.C. Law 17-391 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of Abatement of Nuisance Construction Projects Emergency Amendment Act of 2005 (D.C. Act 16-42, February 17, 2005, 52 DCR 3045).

For temporary (90 day) addition, see § 2 of GPS Anti-Tampering Emergency Act of 2008 (D.C. Act 17-650, January 6, 2009, 56 DCR 909).

For temporary (90 day) amendment of section, see § 3 of GPS Anti-Tampering Emergency Act of 2008 (D.C. Act 17-650, January 6, 2009, 56 DCR 909).

For temporary (90 day) addition, see § 2 of GPS Anti-Tampering Congressional Review Emergency Act of 2009 (D.C. Act 18-41, April 7, 2009, 56 DCR 2674).

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-24. — Law 5-24, the “Technical and Clarifying Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-261. — Law 8-261, the “District of Columbia Prevention of Domestic Violence Amendment Act of 1992,”

was introduced in Council and assigned Bill No. 8-192, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 18, 1990, it was assigned Act No. 8-239 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — Law 9-96, the “Comprehensive Anti-Drunk Driving Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-34, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-98 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-54. — Law 10-54, the “Panhandling Control Act of 1993,” was introduced in Council and assigned Bill No. 10-72, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-48 and transmitted to both Houses of Congress for its review. D.C. Law 10-54 became effective on November 17, 1993.

Legislative history of Law 10-62. — Law 10-62, the “Illegal Dumping Enforcement Temporary Act of 1993,” was introduced in Council and assigned Bill No. 10-353. The Bill was adopted on first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 4, 1993, it was assigned Act No. 10-115 and transmitted to both Houses of Congress for its review. D.C. Law 10-62 became effective on November 20, 1993.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-117. — Law 10-117, the “Illegal Dumping Enforcement Act of 1994,” was introduced in Council and assigned Bill No. 10-249, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 7, 1993, and January 4, 1994, respectively. Signed by the Mayor on January 25, 1994, it was assigned Act No. 10-181 and transmitted to both Houses of

Congress for its review. D.C. Law 10-117 became effective on May 20, 1994.

Legislative history of Law 13-309. — Law 13-309, the “Anti-Graffiti Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-306, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-560 and transmitted to both Houses of Congress for its review. D.C. Law 13-309 became effective on June 12, 2001.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003,” was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 16-4. — Law 16-4, the “Abatement of Nuisance Construction Project Amendment Temporary Act of 2005,” was introduced in Council and assigned Bill No. 16-101, and was retained by Council. The Bill was adopted on first and second readings on February 1, 2005, and March 1, 2005, respectively. Signed by the Mayor on March 17, 2005, it was assigned Act No. 16-49 and transmitted to both Houses of Congress for its review. D.C. Law 16-4 became effective on May 14, 2005.

Legislative history of Law 16-24. — Law 16-24, the “Abatement of Nuisance Construction Projects Amendment Act of 2005,” was introduced in Council and assigned Bill No. 16-30 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 21, 2005, and July 6, 2005, respectively. Signed by the Mayor on July 14, 2005, it was assigned Act No. 16-133 and transmitted to both Houses of Congress for its review. D.C. Law 16-24 became effective on October 18, 2005.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 23-110.

Legislative history of Law 18-374. — Law 18-374, the “Residential Tranquility Act of 2010,” was introduced in Council and assigned Bill No. 18-63, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 23, 2010, and December 7, 2010, respectively. Signed by the Mayor on January 19, 2011, it was assigned Act No. 18-696 and transmitted to both Houses of Congress for its review. D.C. Law 18-374 became effective on May 26, 2011.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 23-546.

References in text. — The “District of Columbia Theft and White Collar Crimes Act of 1982”, referred to in subsection (a)(2)(C) of this section, and the “Act”, referred to in subsection (a)(2)(D) of this section, is D.C. Law 4-164.

Bracketed translations of the references to the District of Columbia Theft and White Collar Crimes Act of 1982 have been inserted in subsections (a)(2)(C) and (a)(2)(D) of this section for the convenience of the user.

The “Illegal Dumping Enforcement Act of 1994”, referred to in (a)(2)(E) is D.C. Law 10-117.

CASE NOTES

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Charge.

A policeman making an arrest need not immediately advise the prisoner of the specific section of the statute or regulation he is charged with violating; the policeman on the scene cannot be expected to assay the evidence with the technical precision of a prosecutor drawing an information; for example, a person arrested for disorderly conduct may eventually be charged with conspiracy to riot but his arrest is not to be vitiated merely because the arresting officer advised him that he was being arrested for the former. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Whether or not police officer who made warrantless arrest verbally characterized the particular crime for which he made his arrest at the time of making same was immaterial, since the description given by officer did not go to the question of probable cause and only question was whether officer had reasonable ground to believe a felony had been committed. *Bond v.*

United States, 310 A.2d 221, 1973 D.C. App. LEXIS 362 (1973).

Civil infractions.

Absent support for conclusion that defendant had refused to disclose his name and address to officer, it was not reasonable, within restrictions of Fourth Amendment, for officer to effect full custody arrest accompanied by body search, upon stopping defendant for “walking as to create a hazard.” U.S. Const.Amend. 4; D.C. Code 1981, §§ 40-601 et seq., 40-605. *Barnett v. United States*, 525 A.2d 197, 1987 D.C. App. LEXIS 348 (1987).

Arrest of defendant for violating pedestrian walking regulation, which is civil infraction for which only monetary sanction may be imposed, was invalid, and contemporaneous search and seizure violated defendant’s Fourth Amendment rights. U.S. Const.Amend. 4; D.C. Code 1981, §§ 40-601 et seq., 40-605. *Barnett v. United States*, 525 A.2d 197, 1987 D.C. App. LEXIS 348 (1987).

Civil liability for arrest.

Under District of Columbia law, neither police officers nor District, based on conduct of officers, was liable for false arrest; as to officer who encountered plaintiff at scene of motor vehicle accident, plaintiff in fact asserted that he was not arrested at accident scene and testified that he never saw that officer after he was placed in police cruiser; as to two other officers, they were acting at direction of superior who ordered them to transport plaintiff, and officers had ample probable cause to believe that plaintiff was guilty of DUI in view of fact that he had crashed his car and was acting in a manner consistent with intoxication, and could not have known from their own observations that first officer did not observe plaintiff operating or attempting to operate his vehicle and thus that arrest for DUI was not authorized. D.C. Code 1981, § 23-581(a)(1)(B). *Scott v. District of Columbia*, 101 F.3d 748, 1996 U.S. App. LEXIS 31236 (C.A.D.C. 1996), writ of certiorari denied by 520 U.S. 1231, 117 S. Ct. 1824, 137 L. Ed. 2d 1031, 1997 U.S. LEXIS 3137, 65 U.S.L.W. 3766 (1997).

Under District of Columbia law, if an arrest was legally justified, as if supported by probable cause or a valid warrant, the conduct of the

arresting officer is privileged and a claim for false arrest or imprisonment will not lie. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Under District of Columbia law, even if an arrest was objectively unlawful, an officer may justify that arrest and defeat an action for false arrest or imprisonment by showing a reasonable good faith belief that his or her conduct was lawful. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Detective was not liable, under District of Columbia law, for false arrest and imprisonment, inasmuch as his belief that probable cause existed to arrest suspect seen in ATM videotape was reasonable even though arrest, for killing victim whose ATM card was used in that machine at approximately that time, was not justified in that discrepancy in videotape time record was greater than detective had been given to understand, such that arrestee could not have committed crime; no one, at time of arrest, knew the size of the time discrepancy. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Transit authority police had probable cause to arrest bus passenger for assaulting bus driver, and therefore police were protected by qualified immunity from any claim passenger had for false arrest and false imprisonment, where bus driver told police that passenger spat in his face and attempted to flee bus, and passenger refused to provide any identification. *Saidi v. Washington Metro. Area Transit Auth.*, 928 F. Supp. 21, 1996 U.S. Dist. LEXIS 7399 (1996).

Transit authority police had probable cause to arrest bus passenger for assaulting bus driver, and therefore police were protected by qualified immunity from any claim passenger had for malicious prosecution, where bus driver told police that passenger spat in his face and attempted to flee bus, and passenger refused to provide any identification. *Saidi v. Washington Metro. Area Transit Auth.*, 928 F. Supp. 21, 1996 U.S. Dist. LEXIS 7399 (1996).

Even if arresting officers had acted in good faith, they would not be safe from potential liability for constitutional deprivations arising out of arrests without probable cause. *U.S. Const. Amends. 1, 4. Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

If police officer has so-called constitutional probable cause to arrest, determined by reference to objective standard used to determine probable cause in criminal proceeding, arrest will be lawful and officer accordingly will have complete defense to false arrest claim. District

of Columbia v. *Murphy*, 635 A.2d 929, 1993 D.C. App. LEXIS 324 (1993).

Consent to search.

When determining voluntariness of a consent to search, account must be taken of subtly coercive police questions, as well as the possibly vulnerable subjective state of the person who consents. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

Test for determining voluntariness of a consent to search is subjective, focusing specifically on the consenting person's characteristics and subjective understanding and on whether consent was freely given, and court can take into consideration the youth of the accused, his lack of education, or his low intelligence, and additional factors include the length of the detention prior to consent, repeated and prolonged questioning, and physical punishment. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

The voluntariness of a consent to search is a question of fact to be determined from all the circumstances. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

Defendant's consent to search of his person was voluntary; there was nothing in the record to suggest that coercion, fear, or intimidation was used to obtain defendant's consent to search, the traffic stop took place during the day and on a public street, officers never drew their weapons or spoke in a loud voice, defendant was not dragged from the car, and defendant's telling the officer to "go ahead" with the search was very clear consent. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

To justify a search under the consent exception to warrant requirement, the government must prove by a preponderance of the evidence that consent was, in fact, freely and voluntarily given. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

At time defendant consented to be searched, he had only been temporarily seized in course of a valid traffic stop and was not in custody for Fourth Amendment purposes; traffic stop and questioning took place on public street during daylight hours, only a few questions were asked and they were not particularly unusual, driver of vehicle was peaceably arrested for not having driver's license, there was no reason for defendant, who was a passenger, to think that he might be arrested for similar offense since he had not been driving, defendant had been stopped for no longer than five minutes, and neither defendant nor driver had been verbally threatened, nor had any of the officers displayed a weapon. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

Defendant's consent for police to search his room was voluntary and not coerced, even though defendant was not fluent in English, where there was a Spanish speaking officer available who translated the consent form for defendant, defendant stated he understood the consent form, there were no more than three officers in the apartment at the time they secured defendant's consent, the officers never drew or displayed their weapons, and although defendant was not allowed to leave, he remained in the familiar surroundings of his home. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

Demonstrations.

— In general.

It was error to order District of Columbia police officials to formulate a comprehensive manual of policies to be followed in dealing with mass demonstrations absent showing that police officials directed, authorized or approved use of excessive force, any showing that it was department policy to detain prisoners an unreasonable time or deny them adequate medical treatment or that delay in booking was due to anything other than a great number of arrests in prior demonstrations, notwithstanding that in individual cases mistakes may have been made. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

In correcting any improprieties in District of Columbia practices and policies of handling mass demonstrations the district court was to avoid any undue limitations on the police department's latitude in dispatch of its own internal affairs. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Rebuttable presumption that an arrest not accompanied by a field arrest form is invalid did not justify sweeping prohibition of any and all mass arrests of antiwar protestors without completion of field arrest forms; probable cause could exist even though evidence thereof was not recorded at time of arrest. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Mass arrests of demonstrators by District of Columbia police officers were not invalid for failure to contemporaneously complete field arrest forms or other procedures for recording information necessary to establish probable cause; if all members of a group are arrested the prosecutor may be able to prove, by testimony of on-the-scene policemen, that there was probable cause to believe that the group as a whole was violating the law by violence or obstruction or by remaining on the scene after reasonable notice and opportunity to disperse.

D.C. Code § 22-1121(2). *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Police may not attempt to regulate the conduct of a demonstration by ordering persons to move on unless a breach of the peace is threatened or intended. D.C. Code § 22-1121. *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

District of Columbia police department which, in the past, had violated constitutional rights of persons arrested during mass arrests attendant to demonstrations would be required to formulate a comprehensive written plan clearly stating the policies and procedures to be followed by the department in mass demonstrations and to clearly delineate the duties of officers involved. *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

Police department which had failed to use proper field arrest procedures in handling mass arrests during demonstrations in the past would be enjoined from instituting mass arrests without contemporaneous completion of field arrest forms or some other administrative device for recording information necessary to establish probable cause at a later time. *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

Arrests, during mass demonstrations, of persons predicated solely on the profanity of the arrestee, without a showing of likelihood of inciting violence, were without probable cause and thus unlawful. D.C. Code § 22-1107. *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

Standard guiding an officer in deciding whether a breach of the peace has occurred or will occur is the presence of a substantial risk of violence. D.C. Code § 22-1121. *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

— Police lines, demonstrations.

District of Columbia police line regulation is not unconstitutionally vague and overbroad as relying on subjective terms to define proscribed

conduct since under the regulations a citizen must not cross a police line without authority and must obey any police order necessary to effectuate any of the five specified purposes of the line, e. g., fires, accidents, wrecks; if location of the line is clearly indicated and adequate notice given its application will not trap innocent persons; adequate notice is a requirement implicit in the regulation. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

In scrutinizing District of Columbia police line regulation for vagueness the Court of Appeals observed the rule of construction announced by the Municipal Court of Appeals for the District, that is, that interpretation of the police regulation must be based on reading the entire regulation rather than a part or word thereof. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Provision of District of Columbia police line regulation authorizing establishment of a police line on "occasions [that] cause or may cause persons to collect on the public streets" is not unconstitutionally vague or overbroad as regards bounds of police discretion since such clause is restricted by the functional limitations that follow it, in that a police line must be "necessary" to achieve one of three basic purposes, including exclusion of the public from vicinity of a riot or disorderly gathering or other emergency; word "disorderly" is not unconstitutionally vague and word "emergency" takes the color of the events preceding it in its clause. *U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Word "necessary" in provision of District of Columbia police line regulation requiring every person present at scene of a described occasion to comply with any necessary order or instruction of a police officer is not unconstitutionally vague or overbroad since the word is to be given the same meaning as it has in prior sentence describing the situations authorizing establishment of a police line and, as in such sentence, it limits police discretion to accomplishment of specified and narrow purposes and cannot reasonably be construed to authorize the police to issue orders infringing peaceful exercise of First Amendment rights. *U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Since District of Columbia police line regulation deals only with extraordinary or emergency occasions in which substantial factors of unpredictability exist, the regulation's definition of the scope of police discretion in functional terms is reasonable and meticulous specificity is not required; ordinance is not

unconstitutionally vague for failure to set out the "mechanics" of the police line, such as geographic area, number of officers deployed, means of maintaining a line against assault, how long the line is to be maintained and how to announce to the public initiation of a line. *U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

District of Columbia police line ordinance which was used by police officers to interfere with lawful demonstration activity and which gave police officer the unfettered discretion to issue any order he thought reasonable and then to initiate criminal proceedings against a person disobeying the order was unconstitutionally vague and overly broad as applied to demonstration activities, i.e., those in which First Amendment rights were being exercised. *U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

Entry.

Where police officers had received complaint that accused, who lived in the same apartment building as the complainant, had pointed a gun at him and threatened to kill him and where, upon knocking on accused's apartment door, accused answered the door, the entry of the police was permissible under the circumstances, even though not consented to. *D.C. Code §§ 22-504, 22-3214(b); U.S. Const. Amend. 4. United States v. Simpson*, 330 A.2d 756, 1975 D.C. App. LEXIS 305 (1975).

Exigent circumstances.

Police officers' observation as defendant put the brown paper bag he was holding in trunk of car next to which he was standing, shut trunk lid, ran away, and discarded plastic bags of crack cocaine as he ran provided police with probable cause to believe that there was contraband in both the paper bag and the trunk, and thus, warrantless search of trunk and any containers in the trunk that might contain contraband was permitted under automobile exception to the warrant requirement. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Police officers who had probable cause to arrest accused at about 10:15 p. m., following fellow apartment dweller's accusation that accused had pointed a gun at him and threatened to kill him, were not required to obtain an arrest warrant for the accused in light of the exigent nature of the circumstances. *D.C. Code §§ 22-504, 22-3214(b); U.S. Const. Amend. 4. United States v. Simpson*, 330 A.2d 756, 1975 D.C. App. LEXIS 305 (1975).

Where officer had victim point out suspects, officer took victim to office of prosecutor for protection and upon returning was unable to find defendant and another and then went to motel at which defendant was reportedly staying and arrested defendant and his companion as they were about to leave the city, arrest without a warrant, effectuated by unconsented to entry into motel room, for not only violations of the three-card monte statute but grand larceny was valid and paraphernalia seized as incident to arrest were admissible. *D.C. Code §§ 22-1506, 22-2201. Bond v. United States, 310 A.2d 221, 1973 D.C. App. LEXIS 362 (1973).*

Warrantless arrest effectuated by unconsented to entry is justified where there is probable cause to believe that a suspected felon is about to flee. *Bond v. United States, 310 A.2d 221, 1973 D.C. App. LEXIS 362 (1973).*

Expungement.

Persons who were unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971 were entitled to full expungement of their arrest records, including entry of court order declaring that the seizures should be deemed not to have been "arrests." *U.S. Const. Amends. 1, 4. Tatum v. Morton, 562 F.2d 1279, 1977 U.S. App. LEXIS 12080 (C.A.D.C. 1977).*

Members of religious group who were wrongfully arrested during prayer vigil on the White House sidewalk were entitled to expungement of local arrest records. *Tatum v. Morton, 386 F. Supp. 1308, 1974 U.S. Dist. LEXIS 11587 (1974), remanded by 562 F.2d 1279, 183 U.S. App. D.C. 331, 1977 U.S. App. LEXIS 12080 (1977).*

Trial court's failure to hold hearing on acquitted defendant's motion to seal records pertaining to her arrest was not an abuse of discretion. *Sepulveda-Hambor v. District of Columbia, 885 A.2d 303, 2005 D.C. App. LEXIS 530 (2005).*

Force used to effect arrest.

Use of physical force in excess of that required to effectuate an arrest or to carry out other lawful duties is a deprivation of constitutional rights to due process of law and to be secure against unreasonable searches and seizures. *U.S. Const. Amends. 4, 5. Washington Mobilization Committee v. Cullinane, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).*

A "seizure" does not occur in the absence of an application of physical force, unless the subject actually yields. *Davis v. United States, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).*

Other circumstances, such as the physical touching of the suspect, display of a weapon, or

the use of language or tone of voice indicating compulsion, may turn a consensual encounter into a seizure. *Davis v. United States, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).*

Evidence that officer physically restrained defendant, for the purpose of effecting his arrest, by grabbing and picking him up after defendant began swinging at officer was sufficient to show that defendant was in "lawful custody" before he fled his jacket and ran away, as required to support conviction for escape from the lawful custody of an officer. *Mack v. United States, 772 A.2d 813, 2001 D.C. App. LEXIS 111 (2001).*

Where an officer physically restrains a person pursuant to a lawful arrest, or where the person has submitted to a lawful arrest, "lawful custody" exists within the meaning of statutory provision making it a crime to escape from the "lawful custody of an officer." *Mack v. United States, 772 A.2d 813, 2001 D.C. App. LEXIS 111 (2001).*

Police officer has qualified privilege to use reasonable force to effect arrest provided that means employed are not in excess of those which actor reasonably believes to be necessary. *Etheredge v. District of Columbia, 635 A.2d 908, 1993 D.C. App. LEXIS 325 (1993).*

Instructions.

Trial court's error in failing to instruct jury that police officer could defeat false arrest claim by showing that arrest was legally justified, that is, by showing either probable cause to believe felony had been committed or probable cause to believe misdemeanor had been committed in a manner specified by statute, was prejudicial and harmful error, warranting vacatur of judgment for District in motorist's false arrest action arising out of traffic incident; instructions that were provided allowed jury to find District could defeat claim on lesser showing. *Enders v. District of Columbia, 4 A.3d 457, 2010 D.C. App. LEXIS 547 (2010).*

Investigatory stop and frisk.

Stop and frisk following information from anonymous tipster which described individual with a gun was supported by reasonable suspicion, where the tipster informed the police in person and subjected himself to ready identification, and potential criminal prosecution for giving false information, when he approached the police in his car, and stated that he "just saw" individual, indicating that his knowledge was based upon firsthand observation, and where what the police themselves observed of suspect's conduct was clearly suspicious, in that they observed him concealing himself behind fence in the parking lot of a closed restaurant and peering out toward the street at three o'clock in the morning. *United States v. Thompson, 234 F.3d 725, 2000 U.S. App. LEXIS 33573*

(C.A.D.C. 2000), writ of certiorari denied by 532 U.S. 1000, 121 S. Ct. 1667, 149 L. Ed. 2d 648, 2001 U.S. LEXIS 3327, 69 U.S.L.W. 3686 (2001).

Police are entitled to stop individual if they have reasonable suspicion of criminal wrongdoing. *United States v. Alston*, 832 F. Supp. 1, 1993 U.S. Dist. LEXIS 12402 (1993).

Police had probable cause to stop vehicle being driven by defendant; reliable informants had informed detective that problems existed with title documents for vehicles and defendant and knowledge of detective was presumptively known to other officers who were involved in stopping vehicle and fact that evidence was presented at hearing that vehicle may not have been stolen did not destroy probable cause at time of the stop. *U.S. Const. Amend. 4. United States v. Alston*, 832 F. Supp. 1, 1993 U.S. Dist. LEXIS 12402 (1993).

Officers' actions in approaching vehicle driven by defendant with weapons drawn and asking defendant to get out of vehicle for questioning was appropriate; vehicle was on lookout sheet for stolen vehicles, telex on vehicle informed officers that car would be driven by defendant who, due to prior criminal behavior, might be armed. *United States v. Alston*, 832 F. Supp. 1, 1993 U.S. Dist. LEXIS 12402 (1993).

Searches incident to "reasonable suspicion" are limited to area within immediate reach of stopped individuals. *U.S.C. Const. Amend. 4. United States v. Alston*, 832 F. Supp. 1, 1993 U.S. Dist. LEXIS 12402 (1993).

Deputy United States marshal was legally justified in stopping and detaining plaintiff on steps of courthouse for questioning in regard to a possible breach of courtroom security and in requesting a driver's license in an effort to obtain trustworthy identification from plaintiff, and once plaintiff forcefully grabbed deputy, probable cause to arrest plaintiff for assaulting and interfering with a federal officer in performance of his official duties existed, notwithstanding whether deputy was placed in fear or whether bodily injury was inflicted, and operated as a defense under common law of District of Columbia to deputy and United States, sued under theory of respondeat superior, for torts of assault, battery, false arrest and personal injury. 18 U.S.C. §§ 111, 1114, 3053; 18 U.S.C. §§ 1346(b), 2672, 2674, 2680(h); D.C. Code §§ 22-504, 23-501(2), 23-581(a)(1)(B). *Lucas v. United States*, 443 F. Supp. 539, 1977 U.S. Dist. LEXIS 13669 (1977), affirmed without opinion by 590 F.2d 356, 191 U.S. App. D.C. 225 (1979).

Activation of the emergency lights on a police vehicle did not in itself constitute an investigatory stop of defendant, who was in a car at the location of a reported fight; defendant had already parked his car of his own volition, there might have been some noncoercive and safety-related reasons for activating the emergency

lights, such as to signal passing motorists to use caution, and nothing indicated that defendant was attempting to drive away or that the emergency lights deterred him from doing so. *Jacobs v. United States*, 981 A.2d 579, 2009 D.C. App. LEXIS 457 (2009).

A reasonable suspicion of criminal activity to justify an investigatory stop can be supported by specific reasonable inferences which the police officer is entitled to draw from the facts in light of his experience. *Duckett v. United States*, 886 A.2d 548, 2005 D.C. App. LEXIS 626 (2005).

Police officer did not have reasonable belief that defendant was driving unregistered vehicle, as grounds for conducting traffic stop, based solely on "No Record" response from check on national criminal database and blank screen in state database; "No Record" response merely indicated that vehicle and license plate had not been stolen, blank screen response in state database implied that either Department of Motor Vehicles had not yet transmitted registration information for defendant's vehicle database, or error occurred in transmission, and possibility that defendant's metal license plate was fake was too remote a possibility. *Duckett v. United States*, 886 A.2d 548, 2005 D.C. App. LEXIS 626 (2005).

Police officer had reasonable suspicion to make investigatory stop after entering hotel lobby and smelling "very strong odor" of marijuana emanating from defendant. *Griffin v. United States*, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

Unprovoked flight upon noticing the police is a factor for consideration in determining whether reasonable suspicion of criminal activity exists to justify an investigatory stop. In re A.F., 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

Officers lacked particularized facts to conduct investigatory stop and subsequent pat down of juvenile; while juvenile walked away from direction of unmarked police car when it turned onto street, such did not indicate that juvenile recognized or responded to police presence, as after juvenile started to walk away from direction of unmarked police car, he returned to nearby parked car that had its hood up and was undergoing repairs and sat in the passenger seat, thus showing no indication that juvenile planned to flee or drive vehicle away in escape attempt. In re A.F., 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

When the police make a valid stop under Terry, if they have reasonable and articulable suspicion that the suspect is armed and dangerous, they may conduct a protective search for weapons, which, in the absence of probable cause, must be strictly circumscribed by the exigencies which justify its initiation. In re A.F.,

875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

In order for investigatory stop by police to be supported by reasonable suspicion, there must be some minimal level of objective justification for the stop. In re A.F., 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

Driver's and defendant's failure to wear seat belts authorized officer to stop the car and issue a civil citation to driver. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

With respect to circumstances justifying investigative stop, there is a presumption that a citizen is *prima facie* a more credible source than a paid police informant. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

In determining whether officers had reasonable suspicion justifying an investigative stop, information conveyed to the police by an in-person informant, even if he does not reveal his name, is not subject to the same scrutiny as purely anonymous tips. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

Even if each specific act by a suspect could be perceived in isolation as an innocent act, the observing police officer may see a combination of facts that make out an articulable suspicion sufficient to justify a Terry stop. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

When a purported Terry stop is challenged, the court must look at the totality of the circumstances to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

Reasonable suspicion sufficient to support a Terry stop is considerably less than proof of wrongdoing by a preponderance of the evidence. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

To justify an investigative stop, the police must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

Factors relevant in distinguishing between an arrest and a Terry investigatory stop are, among others, the length of detention, the place of detention, the use of handcuffs, the use of weapons, and the announcement of an intent to arrest. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

A Terry seizure involves a temporary detention designed to last only until a preliminary investigation either generates probable cause or results in the release of the suspect. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

A judge has the responsibility to make an independent assessment of the sufficiency of the basis for an investigatory stop, and to do so the judge must be apprised of sufficient facts to enable him or her to evaluate the nature and reliability of that information. *Milline v. United States*, 856 A.2d 616, 2004 D.C. App. LEXIS 430 (2004).

In assessing the constitutionality of an investigatory stop, a court's determination of the existence of reasonable suspicion cannot be a mere ratification of the conclusions of others. *Milline v. United States*, 856 A.2d 616, 2004 D.C. App. LEXIS 430 (2004).

An officer may rely on a police lookout as the basis for an investigatory stop provided that the lookout itself was based upon a reasonable articulable suspicion that its subject has committed an offense. *Milline v. United States*, 856 A.2d 616, 2004 D.C. App. LEXIS 430 (2004).

Fourth Amendment permits a police officer to stop an individual for investigatory purposes so long as the officer possesses a reasonable suspicion supported by specific and articulable facts that the individual is involved in criminal activity. *Milline v. United States*, 856 A.2d 616, 2004 D.C. App. LEXIS 430 (2004).

Description provided by undercover officer in lookout broadcast was sufficiently particular to provide arresting officers with reasonable articulable suspicion to warrant Terry stop; broadcast referred to two suspects who were together at a particular place and time, broadcast included descriptions of both suspects and described defendant by his personal appearance and current location, and arresting officer arrived at the location less than a minute after the lookout was broadcast and observed two individuals who matched the descriptions in broadcast. *Milline v. United States*, 856 A.2d 616, 2004 D.C. App. LEXIS 430 (2004).

The police may briefly detain a person for an investigatory or Terry stop, even if they lack probable cause, if the officers have a reasonable suspicion based on specific and articulable facts that criminal activity may be occurring. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

If an officer reasonably believes that the suspect is armed and dangerous, that officer may conduct a search for weapons sufficient in scope to protect the officers and others present; such a search, however, is a limited one, and should not go beyond what is necessary to determine whether the suspect is armed. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Police officer was reasonably justified in removing ammunition clip from defendant's pocket as part of his search for weapons during Terry stop, and thus, clip was admissible in murder trial, even though officer was unsure whether the clip was a weapon when he felt it

during the frisk; officer had just received a broadcast about a shooting upon stopping defendant, and upon frisking him, he was unable to discern immediately the nature of the object he felt so as to assure himself that it was not a weapon. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Even if police officer's frisk of defendant during Terry stop exceeded its lawful scope, the ammunition clip found in defendant's pocket was still admissible at trial under the inevitable discovery doctrine, where the clip would have been discovered once defendant was identified and placed under arrest. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Police officers had probable cause to believe that defendant had committed a traffic violation, and thus were justified in conducting stop of defendant's vehicle, where observation was made by officers that defendant's front license plate was propped up against his windshield and not secured. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Where under the plain feel doctrine an officer is conducting a protective Terry search for weapons and does not yet have probable cause to seize the object, the officer's touch of the object cannot go beyond the bounds circumscribed under Terry and thus cannot amount to the sort of evidentiary search that Terry expressly refused to authorize such as squeezing, sliding, and otherwise manipulating the contents of the suspicious object more than is reasonably necessary to determine whether a weapon is present. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Frisk of defendant, who was suspect's companion, during lawful Terry stop, as lawful; once police officer saw small silver object in defendant's pocket that looked to him like handgun, officer had sufficient reasonable articulable suspicion that defendant was armed and dangerous to conduct protective pat-down. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

Immediate safety concerns, so long as they are reasonable under the circumstances, will justify the police in stopping, or stopping and frisking, the companion of a person whom the police have reason to seize, even if the police have no particularized suspicion that the companion is armed, dangerous, or engaged in criminal activity. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

Police may order passengers as well as the driver to exit a vehicle stopped for a traffic infraction; such directives are reasonable under the Fourth Amendment because the passengers are already lawfully stopped and the additional intrusion on the passenger is minimal, while the danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

Immediate safety concerns may justify police in stopping, or stopping and frisking, a person based on his association with someone else whom the police reasonably suspect of criminal activity. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

The right to frisk depends on whether the police first have constitutional grounds to insist on an encounter, to make a forcible stop of the person involved. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

Ordinarily a police officer must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

If a police officer has a reasonable articulable suspicion of a crime of violence, or that the person lawfully stopped may be armed and dangerous, then a limited frisk for weapons is likewise permissible and may be immediate and automatic; an inchoate "hunch" is not enough of a basis for such intrusions, but a reasonable suspicion can be supported by specific reasonable inferences which the officer is entitled to draw from the facts in light of his experience. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

The Fourth Amendment permits a forcible stop of a person for investigative purposes where probable cause to arrest is lacking if the police officer has a reasonable suspicion, supported by specific articulable facts, that warrants the intrusion. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

Terry stop of defendant, who was suspect's companion, was justified by police officer's immediate safety concerns, even if officer lacked sufficient reason to suspect defendant of criminal activity; violent crime involving use of knife reportedly had just been committed nearby, suspect matched description of criminal, in confronting suspect, officer could not avoid confronting defendant, and, given recency of crime, it was reasonable to think that if suspect committed it, defendant likely was aware of that fact and was witness if not also accomplice or accessory after the fact. *Trice v. United States*, 849 A.2d 1002, 2004 D.C. App. LEXIS 228 (2004), writ of certiorari denied by 543 U.S. 1078, 125 S. Ct. 934, 160 L. Ed. 2d 820, 2005 U.S. LEXIS 246, 73 U.S.L.W. 3399 (2005).

Even assuming the validity of an investigatory stop, the police are not at liberty to conduct a protective search every time they make an investigative stop. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

Central inquiry in every Terry stop controversy is whether, given totality of circumstances at time of seizure, police officer could reasonably believe that criminal activity was afoot; that suspicion must be particularized as to individual stopped, although combination of independently innocent behaviors and circumstances, both general and specific, can create reasonable suspicion in certain cases. *Black v. United States*, 810 A.2d 410, 2002 D.C. App. LEXIS 664 (2002).

The police may conduct an investigatory stop on less than probable cause provided that, under the totality of the circumstances, the police officer could reasonably believe that criminal activity was afoot. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

During a valid investigatory stop, the police may conduct a limited, protective search for weapons if it appears that the person being investigated is armed and presently dangerous to the officer and others. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

To justify an investigative stop, the police must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion; requirement of articulable suspicion is not an onerous one. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Various factors are considered in determining whether an investigative stop is justified, including the time of day, flight, the high crime nature of the location, furtive hand movements, an informant's tip, a person's reaction to questioning, a report of criminal activity or gunshots, and viewing of an object or bulge indicat-

ing a weapon. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

The Fourth Amendment prohibits police officers from seizing persons through an investigatory stop absent a reasonable, articulable suspicion that criminal activity is afoot. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Some minimal level of objective justification is required to justify a seizure of a person through an investigatory stop, and an inchoate and unparticularized suspicion or hunch does not meet that standard. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

An officer effectuating a seizure of a person through an investigatory stop is required to indicate specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion; reasonableness of the stop turns on the facts and circumstances of each case. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

The requirement of reasonable suspicion needed to justify an investigatory stop is not an onerous one since it is substantially less than probable cause and considerably less than proof of wrongdoing by a preponderance of the evidence; however, the reasonable, articulable suspicion must be particularized as to the individual stopped. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Based upon the whole picture, a detaining officer, in conducting an investigatory stop, must have a particularized and objective basis for suspecting the particular person stopped of criminal activity; such analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Even if each specific action of a defendant was of itself susceptible of an explanation consistent with innocence of criminal conduct, the observing police officer, for the purposes of conducting an investigatory stop, may see a

combination of facts that make out an articulable suspicion to justify stop. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Officer had reasonable suspicion that defendant's vehicle was vehicle wanted in connection with a homicide to justify investigative stop of vehicle; stop of vehicle was made at time early in the morning hours with little other traffic, stop of vehicle was made in response to a report of criminal activity that had taken place approximately twenty-five minutes earlier, officer observed prior to stop that vehicle was being driven slow and cautiously and that a dark T-shirt was appended to the trunk, and officer observed prior to stop that vehicle was one block from the State border. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Although each factor used in determining whether there were articulable facts justifying an investigative stop is useful, such factors are not elements of a conjunctive test, and no one factor is outcome determinative. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

The totality of the circumstances may establish reasonable suspicion to justify an investigative stop despite the fact that all of the factors are not met, and additional circumstances may also be considered. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

The lawfulness of an investigatory stop is based on the totality of the circumstances as seen through the eyes of a reasonable and cautious police officer on the scene, who is guided by his experience and training. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

To conduct a brief, investigatory stop of a person in keeping with the Fourth Amendment, a police officer must have a reasonable, articulable suspicion that criminal activity may be afoot. *Wilson v. United States*, 802 A.2d 367, 2002 D.C. App. LEXIS 375 (2002).

While the "reasonable suspicion" that is required to justify an investigatory stop is a less demanding standard than probable cause and

requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. *Wilson v. United States*, 802 A.2d 367, 2002 D.C. App. LEXIS 375 (2002).

Police officers had reasonable suspicion of criminal activity that justified Terry stop, where defendant and accomplice, on seeing the officers, increased their pace as they entered an apartment building and then hurried down the hallway before turning the corner as if "in a rush," but not running, and they then frantically pounded on an apartment door, in a manner the police reasonably did not perceive as being "about the business" of requesting admittance by a relative or friend. *Wilson v. United States*, 802 A.2d 367, 2002 D.C. App. LEXIS 375 (2002).

Terry stop was not transformed into an arrest by precautions that police officers took after stopping car associated with a murder; it was not unreasonable for police to use four police cruisers and two unmarked vehicles and for officers to approach the car with their weapons drawn, given that murder occurred by perpetrator's running up to victim's car and firing nine bullets into his body. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

The measure of the scope of permissible police action in any investigative stop depends on whether the police conduct was reasonable under the circumstances. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Whether officers had reasonable suspicion to justify an investigatory stop was a question of law. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

The government has the burden of proving that the investigatory stop was constitutionally permissible. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

"Seizure" of pedestrian occurred, so that reasonable suspicion was needed for investigatory stop, where officers, in marked police car with flashing lights on and siren sounding, drove up to pedestrian, and one officer, after getting out of police car, asked pedestrian to 'come over. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

The requirement of "articulable suspicion" for an investigatory stop is not an onerous one; it demands only that the police have some minimal level of objective justification for making the stop, a level of suspicion that is considerably less than proof of wrongdoing by a preponderance of the evidence. *Jefferson v. United*

States, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

Although an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity, there are situations in which an anonymous tip, suitably corroborated, exhibits sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop. *Jefferson v. United States*, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

An informant's anonymous tip, containing predictive information that, when corroborated, shows that the informant had knowledge of concealed criminal activity, exhibits sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop. *Jefferson v. United States*, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

Anonymous informant's tip that particular gas station was about to be robbed had sufficient indicia of reliability to provide reasonable suspicion for investigatory stop of defendant, though tip gave no description of person or persons who were about to rob the station, where officers' observations on the scene, "maybe a minute" after they received radio dispatch, corroborated the tip; officers saw defendant emerging through gate from fenced area reasonably perceived to be off-limits to the public and housing the entrance to cashier's office. *Jefferson v. United States*, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

The reasonable suspicion requirement for an investigatory stop does not compel the police to view ambiguous conduct innocently. *Jefferson v. United States*, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

Fact that officers stopped, without reasonable suspicion, two other people at the gas station was irrelevant to officers' reasonable suspicion for investigatory stop of defendant, who was observed by officers emerging through gate from fenced area reasonably perceived to be off-limits to the public and housing the entrance to cashier's office, after officers had received tip from anonymous informant that the station was about to be robbed. *Jefferson v. United States*, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

If the police had an objective reason to stop defendant because of his conduct, together with anonymous informant's tip that gas station was about to be robbed, the fact that the officers intended to stop and question him based on the tip alone did not invalidate the seizure. *Jefferson v. United States*, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

Officers had reasonable grounds for believing defendant might be armed and dangerous, as basis for protective search during legal stop conducted after receiving tip from anonymous informant that gas station was about to be robbed, where it was 3:00 a.m., the neighbor-

hood had "a lot of robberies," and the report of an imminent "robbery" suggested that someone would be armed. *Jefferson v. United States*, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

The police may briefly detain a person for an investigatory or Terry stop, even if they lack probable cause, if the officers have a reasonable suspicion based on specific and articulable facts that criminal activity may be occurring. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

In determining reasonableness of an investigatory stop, the facts must be judged against an objective standard: would the facts available to the officer at the moment of seizure warrant a man of reasonable caution in the belief that the action taken was appropriate. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape; on the contrary, under Terry, it may be the essence of good police work to adopt an intermediate response. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

A Terry seizure involves a temporary detention, designed to last only until a preliminary investigation either generates probable cause or results in the release of the suspect. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

A police officer must have a reasonable, articulable suspicion that criminal activity is afoot before that officer lawfully can stop or seize an individual without that person's consent. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

The Fourth Amendment requires some minimal level of objective justification for making a Terry stop; thus, it is insufficient for a police officer to merely articulate an inchoate and unparticularized suspicion or hunch. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

It was reasonable for police officer, during valid investigatory stop for weapons, to instruct occupants of defendant's car to step out of the vehicle and then to handcuff them before engaging in additional investigation, where in-person citizen informant indicated that the car was located at a remote area of police station's impound parking lot, and that she feared the car's occupants were there to shoot her nephew when he left the police station, defendant was a large man, and it was two o'clock in the morning. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

It was reasonable for police officers, during valid investigatory stop for weapons, to take a look into defendant's car to see if they saw any

visible weapon, where in-person citizen informant indicated that the car was located at a remote area of police station's impound parking lot, and that she feared the car's occupants were there to shoot her nephew when he left the police station, and it was two o'clock in the morning. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

The police may detain a person briefly on less than probable cause, provided the officer has a reasonable suspicion based on specific articulable facts that the person is involved in criminal activity. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

The minimal level of objective justification required to support an investigatory stop is less demanding than that required for probable cause and considerably less than proof of wrongdoing by a preponderance of the evidence. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Once the police have effected a valid Terry stop, they may conduct a protective search if they have reasonable grounds to believe that the suspect is armed and poses a danger to himself or others. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Police officer's investigatory stop of defendant was permissible under the totality of the circumstances, where defendant surreptitiously handed objects to a known drug user, the objects appeared to be wrapped in plastic, the known drug user inspected the objects, and the area was known as an "open air drug market" at which the officer had previously made drug-related arrests. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, or by putting questions to him if the person is willing to listen; moreover, the fact that the officer identifies himself as a police officer, without more, would not convert the encounter into a seizure requiring some level of objective justification. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Police officer was justified in grabbing defendant, pulling him over to a police cruiser, and putting his hands on the car, as measures to protect officer's safety during a valid investigatory stop of defendant for drugs; specific and articulable facts supported officer's belief that his own personal safety was in peril, where officer testified that defendant turned toward the officers after they confronted him, placed both hands in his pockets, and finally removed only one hand after repeated requests, which indicated defendant could be concealing a weapon. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Police may detain person briefly on less than probable cause provided officer has reasonable suspicion based on specific articulable facts that individual is involved in criminal activity. U.S. Const. Amend. 4. *Hood v. United States*, 661 A.2d 1081, 1995 D.C. App. LEXIS 130 (1995).

In judging reasonableness of police action in making stop and search of automobile, court must look at totality of circumstances. U.S. Const. Amend. 4. *Hood v. United States*, 661 A.2d 1081, 1995 D.C. App. LEXIS 130 (1995).

Circumstances that may be sufficient to allow police to stop individual briefly to make inquiry and to obtain more information may not be sufficient to justify ordering person out of his vehicle. U.S. Const. Amend. 4. *Hood v. United States*, 661 A.2d 1081, 1995 D.C. App. LEXIS 130 (1995).

Frisk of suspect was lawful where it occurred after officer received radio report of citizen's complaint of "man exposing himself and Peeping Tom," where officer sighted suspect, who generally matched description given, within one hour and only one block from location of reported offense, and where suspect reacted evasively upon seeing police cruiser. D.C. Code §§ 22-1112(a), 22-1121(1), 22-3204, 23-581; U.S. Const. Amend. 4. *Robinson v. United States*, 355 A.2d 567, 1976 D.C. App. LEXIS 514 (1976).

There is seizure whenever police officer stops person, either by physical force or show of authority, even if only to ask questions, and search when police officer pats down person's clothing in attempt to find weapons solely for officer's protection. U.S. Const. Amend. 4. *Stephenson v. United States*, 296 A.2d 606, 1972 D.C. App. LEXIS 281 (1972), writ of certiorari denied by 411 U.S. 907, 93 S. Ct. 1535, 36 L. Ed. 2d 197, 1973 U.S. LEXIS 2942 (1973).

Brief stop of suspicious individual, to determine his identity or to maintain status quo momentarily while obtaining more information, may be reasonable in light of facts known to officer at time. U.S. Const. Amend. 4. *Ste-*

phenson v. United States, 296 A.2d 606, 1972 D.C. App. LEXIS 281 (1972), writ of certiorari denied by 411 U.S. 907, 93 S. Ct. 1535, 36 L. Ed. 2d 197, 1973 U.S. LEXIS 2942 (1973).

Where two police officers observed defendant and companion running down street in downtown area at 4:30 a. m., where defendant and companion slowed to a walk when they spotted officers, where one officer had knowledge of prior recent crimes in that area, officers were justified in stopping defendant and companion to question them as to their prior whereabouts. U.S. Const. Amend. 4. Stephenson v. United States, 296 A.2d 606, 1972 D.C. App. LEXIS 281 (1972), writ of certiorari denied by 411 U.S. 907, 93 S. Ct. 1535, 36 L. Ed. 2d 197, 1973 U.S. LEXIS 2942 (1973).

Fourth Amendment does not require policeman who lacks precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow crime to occur or criminal to escape. U.S. Const. Amend. 4. Stephenson v. United States, 296 A.2d 606, 1972 D.C. App. LEXIS 281 (1972), writ of certiorari denied by 411 U.S. 907, 93 S. Ct. 1535, 36 L. Ed. 2d 197, 1973 U.S. LEXIS 2942 (1973).

Where police officer, who was on routine patrol looking for burglary suspects or people breaking into automobiles, observed defendant and an unidentified companion walking on street and looking into parked automobiles, where his observation of the two continued for more than an hour until he and a fellow officer lost them in grounds of zoo, where the officers later observed them coming out of zoo with defendant carrying a brown paper bag that he had not had when he went into the zoo, and where defendant's companion ran when he saw the officers, the police had reasonable grounds to believe that the bag contained the proceeds of a crime, to stop defendant and to ask him to put down the bag, which then opened a bit and revealed what appeared to be a tape deck. D.C. Code §§ 22-2202, 23-581(a)(1)(B, C), (2)(A); U.S. Const. Amend. 4. Smith v. United States, 295 A.2d 64, 1972 D.C. App. LEXIS 260 (1972), writ of certiorari denied by 411 U.S. 951, 93 S. Ct. 1932, 36 L. Ed. 2d 414, 1973 U.S. LEXIS 2683 (1973).

Law enforcement officers.

A deputy United States marshal is a "law enforcement officer" within meaning of District of Columbia Code and is authorized to make an arrest without a warrant for commission of a misdemeanor in his presence. D.C. Code §§ 23-501(2), 23-581(a)(1)(B). Lucas v. United States, 443 F. Supp. 539, 1977 U.S. Dist. LEXIS 13669 (1977), affirmed without opinion by 590 F.2d 356, 191 U.S. App. D.C. 225 (1979).

Miranda warnings.

Miranda warnings, i.e., warnings of right to counsel and to remain silent, are required at

commencement of questioning initiated by law enforcement officers after a person has been taken into custody; such warnings were not required at time of arrest, absent showing of any improper question of prisoner at scene of the arrest. Washington Mobilization Committee v. Cullinane, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

When a person is subjected only to a Terry stop, Miranda warnings are not required. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

Test of whether a person is in custody for Miranda purposes is whether under all of the circumstances a reasonable man innocent of any crime would have thought he was not free to leave. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

Ultimate inquiry in determining whether a person is in custody for Miranda purposes is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

"Custodial interrogation" under Miranda means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

Defendant was not in custody for Miranda purposes, even though police officer grabbed defendant by his shirt, escorted him out of hotel, and questioned him while officer and second officer stood on either side of him, each holding one of his arms; minutes before, it appeared that defendant was running from first officer, officers restrained defendant to prevent him from running again while they investigated marijuana odor that emanated from him, defendant was not handcuffed, placed into police vehicle, or told that he was under arrest, and no guns were drawn. Griffin v. United States, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

For purposes of inquiry as to whether suspect was in custody for Miranda purposes, limiting the focus to the objective circumstances of the interrogation ensures that the police do not need to make guesses as to the circumstances at issue before deciding how they may interrogate the suspect; the police are not charged with the burden of anticipating the frailties or idiosyncrasies of every person whom they question. Morales v. United States, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

Miranda inquiry as to whether suspect was "in custody" is an objective test. Morales v. United States, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

Defendant was not “in custody” for Miranda purposes when police questioned her at her home; defendant was not caught by surprise by police visit, nor was she subject to unwelcome intrusion, because she knew in advance that police were coming to her home, and she was “grateful” to them for bringing her son home, defendant, who did not speak English, was able to speak fluently in Spanish with officer, and though police restricted defendant’s freedom of movement in that they prevented her from going to get her son in another room, which might have been a “seizure” under Fourth Amendment, this restraint on defendant’s freedom of movement, by itself, did not amount to being “in custody” for Miranda purposes. *Morales v. United States*, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

The court, in determining whether a suspect was in custody for Miranda purposes is obliged to consider all of the circumstances surrounding the interrogation in reaching its conclusion. *Morales v. United States*, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

The determination as to whether a suspect is in custody for Miranda purposes depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. *Morales v. United States*, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

An individual is in custody for Miranda purposes only where there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest; whether the curtailment of freedom rises to that level is to be assessed by reference to how a reasonable person in the suspect’s position would have understood his situation. *Morales v. United States*, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

Miranda warnings are required only when a suspect being interrogated is in custody. *Morales v. United States*, 866 A.2d 67, 2005 D.C. App. LEXIS 4 (2005).

Custodial interrogation for Miranda purposes turns on whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest; this test is an objective one, focusing upon how a reasonable person in the suspect’s position would have understood his or her situation. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

Burden is on the government to prove that an unwarned statement of a suspect in custody was voluntarily given without police coercion. *Hill v. United States*, 858 A.2d 435, 2004 D.C. App. LEXIS 426 (2004).

“Interrogation,” for purposes of Miranda, broadly comprises both express questioning and any words or actions on the part of the police, other than those normally attendant to

arrest and custody, that the police should know are reasonably likely to elicit an incriminating response from the suspect. *Hill v. United States*, 858 A.2d 435, 2004 D.C. App. LEXIS 426 (2004).

Detective’s statements to defendant while he was in custody that he was being charged with second-degree murder and that defendant’s friend told police what happened were functional equivalent to express questioning for purposes of Miranda; defendant had been held incommunicado for over three hours, detective’s statement that friend had told police what happened had effect of conveying to defendant that police had evidence of his guilt and was not responsive to defendant’s preceding question of whether friend had been detained, and detective used classic interrogation techniques in establishing authority, confronting defendant with evidence against him, and creating verbal vacuum. *Hill v. United States*, 858 A.2d 435, 2004 D.C. App. LEXIS 426 (2004).

Miranda requirements are only applicable when a suspect is in custody. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Custody is imposed, and Miranda warnings are required, once the investigating officer physically deprives the suspect of his freedom of action in any significant way or, under the circumstances, leads him to believe, as a reasonable person, that he is so deprived. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Custody is recognized for Miranda purposes when there is a formal arrest or restraint on freedom of movement of the degree associated with formal arrest. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Objective test is used to determine whether a suspect is in custody for Miranda purposes, determined by how a reasonable person in the suspect’s position would have understood his situation. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

A court examines the totality of the circumstances to determine whether a suspect is in custody for Miranda purposes, and its evaluation must be informed by the underlying purpose of the Miranda rule, namely to protect individuals from compelled self-incrimination. *Resper v. United States*, 793 A.2d 450, 2002

D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Murder defendant was not subjected to custodial interrogation when he was interviewed at police detective's office after Terry stop, and thus, the administration of Miranda warnings was not required; defendant knew that he was stopped because his car was reportedly involved in incident, he was not formally arrested and he voluntarily went to detective's office without bodily restraints, and he left detective's office after the interview. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

If Miranda warnings are not given to a suspect in custody, any statements made by the suspect may be deemed inadmissible in evidence against him, regardless of whether they were given voluntarily; the record must show clearly that a defendant was given the entire series of warnings and that he knowingly and intelligently waived those rights before making any statements in response to custodial interrogation. *Fisher v. United States*, 779 A.2d 348, 2001 D.C. App. LEXIS 180 (2001), writ of certiorari denied by 534 U.S. 1095, 122 S. Ct. 844, 151 L. Ed. 2d 722, 2002 U.S. LEXIS 72, 70 U.S.L.W. 3428 (2002).

Defendant was not in custody at time his vehicle was stopped while traveling against the flow of traffic on a one-way street, and thus, no Miranda warnings were required. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

An individual who has been temporarily detained for a traffic stop generally is not considered to be "in custody" for purposes of Miranda. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

Defendant's performance on roadside sobriety tests administered by officer following traffic stop was not testimonial in nature, and thus, the privilege against self-incrimination was not implicated and no Miranda warnings were required. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

Obstructing justice.

Statute governing arrest for refusal to identify one's self does not require that pedestrian carry proof of his identification. D.C. Code 1981, § 40-627. *Barnett v. United States*, 525 A.2d 197, 1987 D.C. App. LEXIS 348 (1987).

Probable cause.

— In general.

Motorist's admission to committing several offenses, including driving without a license,

established probable cause to arrest and perform search of car incident to arrest during which illegal weapons were found. U.S.C. Const. Amend. 4; D.C. Code 1981, § 23-581(a)(1)(B). *United States v. Cutchin*, 956 F.2d 1216, 1992 U.S. App. LEXIS 2669 (C.A.D.C. 1992).

Police officers who were admitted to defendant's apartment with defendant's consent during course of investigation of death of five-year-old girl and who observed scratches on defendant's face, presence of candy, general disarray of room, and indications of recent bathing by defendant had probable cause for arrest. *United States v. Sheard*, 473 F.2d 139, 1972 U.S. App. LEXIS 6678 (C.A.D.C. 1972), writ of certiorari denied by 412 U.S. 943, 93 S. Ct. 2784, 37 L. Ed. 2d 404, 1973 U.S. LEXIS 2157 (1973).

Washington Metropolitan Area Transit Authority (WMATA) police officer violated Fourth Amendment by stopping defendant's vehicle for driving through a stop line on a city street, and then making a warrantless arrest of defendant; officer was acting outside his jurisdiction, and he lacked reasonable suspicion for the stop inasmuch as he relied upon a mistaken understanding of the law in believing that the stop line was on WMATA property. *United States v. Simon*, 368 F.Supp.2d 73, 2005 U.S. Dist. LEXIS 5357 (2005).

In determination, under District of Columbia law, whether an objectively unlawful arrest was justified by officer's reasonable good faith belief that his or her conduct was lawful, good faith is to be evaluated from perspective of the arresting officer, rather than that of the plaintiff. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Under District of Columbia law, determination of whether police had probable cause for an arrest is ordinarily a mixed question of law and fact, but where the facts are not in dispute, the issue becomes a purely legal one which the court can answer on its own. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Under District of Columbia law, existence of probable cause for an arrest is based on objective test of whether a reasonably prudent police officer, considering the totality of the circumstances confronting him, would be warranted in believing that the individual in question committed the offense. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

While an objectively reasonable mistake of fact can legally support a determination of probable cause for arrest, a mistake that is the product of the government's willful ignorance, investigative negligence, or is otherwise unreasonable, cannot. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Under District of Columbia law, a police officer may justify an arrest by demonstrating that (1) he or she believed, in good faith, that his or her conduct was lawful, and (2) this belief was reasonable. *Amons v. District of Columbia*, 231 F.Supp.2d 109, 2002 U.S. Dist. LEXIS 21186 (2002).

Police may arrest individual and may seize property if they have probable cause of criminal wrongdoing. *United States v. Alston*, 832 F. Supp. 1, 1993 U.S. Dist. LEXIS 12402 (1993).

Arrests made without probable cause were violative of the Fourth Amendment. U.S. Const. Amend. 4. *Washington Mobilization Committee v. Cullinane*, 400 F. Supp. 186, 1975 U.S. Dist. LEXIS 16420 (1975), reversed by 566 F.2d 107, 184 U.S. App. D.C. 215, 1977 U.S. App. LEXIS 11597, 1977 U.S. App. LEXIS 13879 (1977).

Fruits of a warrantless search incident to an arrest are permitted if a law enforcement officer has probable cause to arrest, which arises when a reasonably prudent police officer, considering the total circumstances confronting him and drawing from his experience, would be warranted in the belief that an offense has been or is being committed. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

Defendant's announcement during investigatory stop that he had marijuana on his person gave police officer probable cause to search him. *Griffin v. United States*, 878 A.2d 1195, 2005 D.C. App. LEXIS 378 (2005).

As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

Police officers had probable cause to arrest defendant for possession of a controlled substance and to conduct search incident to this arrest; defendant admitted to police during lawful Terry stop that he had in his possession "one little bag" in response to officer's question as to whether defendant had any illegal contraband on his person, there had been eyewitness account of illegal drug use in truck, defendant was stopped by officers near truck, and defendant admitted that he had just been inside truck. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

To conduct a warrantless search of a person, as opposed to a mere frisk, the police must have "probable cause," which arises when a reasonably prudent police officer, considering the total circumstances confronting him and drawing from his experience, would be warranted in the belief that an offense has been or is being committed. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

A court may not simply rely on a police officer's conclusory assertions in deciding whether a search or seizure was justified under the Fourth Amendment, but rather must eval-

uate the facts underlying those assertions. *Milline v. United States*, 856 A.2d 616, 2004 D.C. App. LEXIS 430 (2004).

Police officer had reasonable articulable suspicion to believe that defendant had just committed a crime so as to justify Terry stop; officer heard broadcast regarding a shooting that had occurred a few blocks away involving two men, one of whom was wearing a distinctive jacket, and officer stopped defendant and his companion after seeing that companion was wearing a similar jacket. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Test for judging the existence of probable cause necessary for an arrest is whether a reasonably prudent police officer, considering the total circumstances confronting him and drawing from his experience, would be warranted in the belief that an offense has been or is being committed. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

Probable cause to arrest must be supported by more than mere suspicion, but need not be based on evidence sufficient to sustain a conviction. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Police are not required to test suspected narcotics on the spot before making an arrest when other evidence supports a finding of probable cause. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

An "articulable suspicion" supporting a search for weapons is substantially less than probable cause, but more than a mere hunch or gut feeling. *James v. United States*, 829 A.2d 963, 2003 D.C. App. LEXIS 529 (2003).

Officer did not have probable cause to search defendant for weapons and, thus, could not search defendant on that basis, where government failed to show that officer feared for his safety. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

The test for judging the existence of probable cause is whether a reasonably prudent police officer, considering the total circumstances confronting him and drawing from his experience, would be warranted in the belief that an offense has been or is being committed. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

Probable cause is a flexible, common-sense standard that does not demand any showing that the officer's belief that he has witnessed criminal behavior be correct or more likely true than false; rather, the officer's belief need only be based on reasonably trustworthy information at the moment of arrest. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

There is no requirement that the arresting officer have sufficient firsthand knowledge to constitute probable cause; it is enough that the police officer initiating the chain of communi-

cation had firsthand knowledge. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

When faced with a fast moving sequence of events involving a number of police officers, a citizen's rights are protected if, at the time of the intrusion, the information collectively known to the police is constitutionally sufficient to justify that intrusion. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

Officer had probable cause to stop automobile of make and color described in police broadcast for its occupants' reported involvement in drug activity, even though the car was out of sight for approximately 30 to 60 seconds, where evidence showed that there were no other car of similar description in immediate vicinity, officer had witnessed what appeared to be a drug transaction between a man that approached the car and the passenger in the right front seat, and defendant was that passenger. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

Police descriptions applicable to large numbers of people will not support a finding of probable cause to arrest, particularly when it is unclear how much time passed between the broadcast of a description and the sighting of a suspect who meets that description. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

Generally, any restraint of a person amounting to a seizure is invalid unless justified by probable cause. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Police officers did not have reasonable grounds to believe that criminal activity was afoot or that defendant was armed and dangerous to justify investigative stop and frisk of defendant; no report of criminal activity was made in the area where defendant was located on the day of defendant's arrest, no association was made between defendant and the earlier shootings and drug activity in the neighborhood, and defendant's explanation that he was waiting for particular individual, even with officer's suspicion that it was the same person about whom he had reports of involvement with drug activity, was insufficient to conclude that defendant had also engaged in some type of criminal activity. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

The fact that a person is in an area known for narcotics traffic and even shootings is insufficient, without more, to buttress the conclusion that an investigative stop of such person is warranted. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Probable cause for an arrest is a flexible, common-sense standard that does not demand any showing that the officer's belief that he has witnessed criminal behavior be correct or more

likely true than false. *Ball v. United States*, 803 A.2d 971, 2002 D.C. App. LEXIS 387 (2002).

The test for judging the existence of "probable cause" for an arrest is whether a reasonably prudent police officer, considering the total circumstances confronting him and drawing from his experience, would be warranted in the belief that an offense has been or is being committed. *Ball v. United States*, 803 A.2d 971, 2002 D.C. App. LEXIS 387 (2002).

Police officers had probable cause to arrest defendant and search him incident to the arrest when one officer, a veteran familiar with the odor and packaging of PCP, saw the other officer remove tin foils of PCP from defendant's pocket and detected "a really strong odor of PCP" coming from both defendant and his accomplice. *Wilson v. United States*, 802 A.2d 367, 2002 D.C. App. LEXIS 375 (2002).

The question of probable cause to search or to arrest is to be viewed from the vantage point of a prudent, reasonably cautious police officer guided by his experience and training. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

Probable cause to search or to arrest is measured by the totality of the circumstances. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

Whether officers had probable cause for warrantless stop and search of defendant was a question of law. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

The test for determining "probable cause" for an arrest is whether a reasonably prudent police officer, considering the total circumstances confronting him and drawing from his experience, would be warranted in the belief that an offense has been or is being committed. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

Probable cause for an arrest is a fluid concept, turning on the assessment of probabilities in particular factual contexts, which is not readily, or even usefully, reduced to a neat set of legal rules. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

Probable cause for an arrest involves factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

Under the right circumstances, evidence of an on-going but interrupted two-way drug transaction can support a finding of probable cause for an arrest. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

Police had objective probable cause to arrest street vendor for failing to obey police orders to relocate his vending stand away from an entrance zone near auditorium, regardless of whether traffic sign marking entrance zone was properly located; by his own admission, vendor

was operating vending stand in a designated entrance zone. D.C. Code 1981, § 23-581(a)(1); D.C.Mun.Reg. title 24, § 510.21. *Karriem v. District of Columbia*, 717 A.2d 317, 1998 D.C. App. LEXIS 152 (1998), writ of certiorari denied by 526 U.S. 1147, 119 S. Ct. 2025, 143 L. Ed. 2d 1036, 1999 U.S. LEXIS 3722, 67 U.S.L.W. 3732 (1999).

Test for whether police officer had probable cause to arrest is dependent entirely on facts as they actually occur—i.e., on the objective facts—without regard to what police officer may have actually, even reasonably, perceived facts to be. *District of Columbia v. Murphy*, 635 A.2d 929, 1993 D.C. App. LEXIS 324 (1993).

Defendant's handing of money to another person, standing alone, did not give rise to implication that there was criminal activity afoot sufficient to give rise to probable cause to make warrantless arrest. *Haywood v. United States*, 584 A.2d 552, 1990 D.C. App. LEXIS 301 (1990).

Owner's request that police keep a special watch over vacant property armed police with knowledge that no one had permission to enter the property, for purposes of determining whether police had probable cause to arrest person found inside the house. D.C. Code 1981, § 22-3102. *Culp v. United States*, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

Where police officers observed defendant inside a vacant building, and had reason to believe that defendant did not belong there, and the property itself revealed indications of a continued claim of possession by the owner or manager, police had probable cause to arrest defendant for unlawful entry, and thus, subsequent search of defendant's person, revealing heroin, was valid as incident to a lawful arrest. D.C. Code 1981, §§ 22-3102, 33-541(d). *Culp v. United States*, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

Owners of vacant house sufficiently indicated efforts to protect the property against intruders to allow police officers to reasonably conclude that defendant knowingly entered against the will of the person lawfully in charge, for purposes of meeting criteria for unlawful entry, despite absence of a "no trespassing" sign, where owners had made continuous and diligent efforts to board up the house, and at the time defendant entered at least some of the windows were boarded over. D.C. Code 1981, § 22-3102. *Culp v. United States*, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

Fact that arresting officer and prosecutor charged defendant with violation of statute governing misdemeanor possession of narcotic drug did not preclude finding defendant's arrest valid under statute authorizing arrest without warrant of a person whom officer has probable cause to believe has committed a felony, if officer had probable cause to believe felony had

been committed and that defendant had committed it; charging decision could not invalidate an otherwise legal arrest. D.C. Code §§ 23-581(a)(1)(A), 33-402(a). *United States v. Hamilton*, 390 A.2d 449, 1978 D.C. App. LEXIS 548 (1978).

Police officer who had interviewed alleged assault victim and concluded that his complaint, to the effect that accused had pointed a gun at him and threatened to kill him, was genuine, had probable cause to believe that an armed assault had taken place and that accused had committed it, and had probable cause to arrest accused. D.C. Code §§ 22-504, 22-3214(b). *United States v. Simpson*, 330 A.2d 756, 1975 D.C. App. LEXIS 305 (1975).

Where defendant on officer's request, after fourth encounter with defendant and codefendant, displayed an automobile radio he was carrying and codefendant denied knowing defendant, which was highly improbable on basis of officer's prior observations indicating that codefendant was acting some how as a lookout, officer was possessed of sufficient facts and circumstances warranting belief that offense had been committed and justifying arrest, even though officer had received no report of crime of automobile radio theft. U.S. Const. Amend. 4; D.C. Code § 23-581. *Wray v. United States*, 315 A.2d 843, 1974 D.C. App. LEXIS 374 (1974).

Where officer observed accused looking or searching behind desk in room of office building and observed him depart as soon as officer's presence became known and accused answered "Nothing" when officer addressed defendant outside building and asked him what he had been doing in the office, officer had probable cause to arrest accused and fruits of larcenies seized from accused's person incident to the arrest were admissible. D.C. Code §§ 22-103, 22-2201, 22-2202, 23-581(a)(1)(B). *Arrington v. United States*, 311 A.2d 838, 1973 D.C. App. LEXIS 389 (1973).

Officer who observed defendant, a high school student outside school building, trying to stuff some money into envelope similar to those used in other narcotics transactions at the school and who saw a known narcotics addict approach defendant who started to run when officer reached for the envelope and tore a portion of the envelope from defendant's hand did not have probable cause to arrest defendant at the moment the envelope was seized, and heroin found in the envelope should have been suppressed. D.C. Code § 33-402. *Arrington v. United States*, 311 A.2d 838, 1973 D.C. App. LEXIS 389 (1973).

In justifying particular intrusion, police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. U.S. Const. Amend. 4. *Stephenson v. United States*, 296 A.2d 606,

1972 D.C. App. LEXIS 281 (1972), writ of certiorari denied by 411 U.S. 907, 93 S. Ct. 1535, 36 L. Ed. 2d 197, 1973 U.S. LEXIS 2942 (1973).

Where officers who had observed defendant peering into automobiles later observed defendant holding some object under his coat and when defendant refused to remove his hands from his pockets search for weapons was made disclosing that defendant was concealing beneath his coat a tape player, the connecting wires of which had been broken, action of police in confronting defendant on street was reasonable and disclosure of the tape player gave officers probable cause for arrest even though no victim had reported a loss, and pistol seized two days later during execution of arrest warrant was not the fruit of an unlawful arrest. D.C. Code §§ 22-2202, 22-3204, 23-581(a)(1)(C), (a)(2). *Jenkins v. United States*, 284 A.2d 460, 1971 D.C. App. LEXIS 249 (1971).

— Informants and witnesses, probable cause.

Informant's tip about drug sale was sufficient to provide law enforcement officers with probable cause to arrest defendant for drug offense, even though defendant argued that informant was unable to say where on defendant's person drugs could be found; informant personally witnessed drug transaction, provided accurate information as to defendant's appearance, had opportunity to identify defendant before any search occurred, had long and reliable history of giving accurate information to officers, was employed, and was vulnerable to prosecution should his information have proved false. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

In reviewing whether an informant's tip provided probable cause to arrest, a judicial officer should consider the totality of the circumstances, taking into account the informant's veracity, reliability, and basis of knowledge. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

Along with an informant's basis of knowledge of criminal activity, the informant's general credibility and the reliability of the information he or she provides are important factors in an assessment of whether the information provided probable cause to arrest. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

Reliability of an informant's tip is also strengthened where police can independently corroborate the informant's story, for purpose of determining whether the tip provided probable cause to arrest. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

If a citizen claims or appears to be a victim of a crime or an eyewitness to a crime, the reli-

ability of his information is greatly enhanced, for purpose of determining whether there was reasonable suspicion justifying a stop. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

Police officers had reasonable articulable suspicion, based on citizen's report and defendant's admission that he had been in truck at issue, to justify Terry stop of defendant; citizen had flagged down officers and told them that some persons were using drugs inside red, "construction-type" pickup truck parked in front of his house, citizen was eyewitness to crime, information he provided was given in person so that officers were able then and there to assess his reliability, information from citizen was corroborated almost immediately when officer saw truck in exact location stated by citizen, and defendant admitted to officers that he had recently been in truck. *Nixon v. United States*, 870 A.2d 100, 2005 D.C. App. LEXIS 51 (2005).

Officer had probable cause to believe that criminal activity was afoot, so as to support search of defendant incident to a lawful arrest; another officer related to arresting officer that he observed a two-way exchange of money for a small object between defendant and another individual, in an area known for high narcotics activity, after the individual had approached at least one other car in the same suspicious manner that he had approached defendant's vehicle. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

Police lacked probable cause to arrest defendant for burglary and to search bag he was carrying incident to an arrest, despite existence of reasonable suspicion to stop defendant and companion in connection with that burglary, where officer who stopped defendant and companion reported the stop 20 minutes after victim reported seeing burglars flee, stop occurred a mile and a half from scene of burglary, and neither individual was wearing red pants as reported by burglary victim. *McFerguson v. United States*, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub nomine *Worthington v. United States*, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

Police officer had a reasonable, articulable suspicion of criminal activity that justified Terry stop of defendant in police station's impound parking lot to investigate for weapons, where an in-person citizen informant stated that defendant's car was sitting in a remote area of the lot and that she was concerned that her nephew, who was in the police station, would be shot by defendant, and police officer confirmed by his own observation the information about the location of defendant's car, which was in an area that officer had never seen any occupied cars, especially at two o'clock in the morning. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Police lacked probable cause to effect defendant's warrantless arrest; even if Government met burden of showing that "tip" which officers received came from reliable source, defendant was not subject of tip, there was no evidence that officers had seen him before, it could not be inferred from evidence that defendant saw unmarked police vehicle or that if he did that he recognized it as police cruiser, and although informant had stated that black male was holding narcotics for distribution near trash barrel, trash barrel which defendant walked toward lost any sinister connotation when on winter afternoon there might have been a need for warmth and companionship, and it was unclear what "push-off" between defendant and alleged drug dealer meant. *Haywood v. United States*, 584 A.2d 552, 1990 D.C. App. LEXIS 301 (1990).

Paid police informant may generally be presumed to be less credible than citizen informant, for purposes of determining whether tip from informant provides probable cause for arrest. *U.S. Const. Amend. 4. Goldston v. United States*, 562 A.2d 96, 1989 D.C. App. LEXIS 140 (1989).

Paid police informant's long and rather extraordinary history of providing police with productive tips outweighed general presumption that paid police informant would be less credible than citizen informant, for purposes of determining whether tip from informant provided probable cause for arrest. *U.S. Const. Amend. 4. Goldston v. United States*, 562 A.2d 96, 1989 D.C. App. LEXIS 140 (1989).

Information received from paid police informant regarding defendant's daily sale of drugs at street corner provided probable cause for arrest of defendant, where informant had long and extraordinary history of providing police with productive tips, informant was employed, his motivation for supplying accurate information was monetary remuneration, and he was not drug addict, informant joined police during surveillance, informant admitted to police that he purchased cocaine from defendant, police corroborated number of details of informant's tip, and informant's tip was based on personal observation. *U.S. Const. Amend. 4. Goldston v. United States*, 562 A.2d 96, 1989 D.C. App. LEXIS 140 (1989).

Since arresting officer reasonably relied upon information supplied by undercover police officer, who had purchased dilaudid from defendant only moments before, given past record of drug arrests made upon undercover officer's information every day, since probable cause existed to believe that defendant had committed a felony, in light of arresting officer's awareness that sale of dilaudid violated Controlled Substances Act, and since search of defendant following her arrest and seizure of marked bills with which undercover officer had paid for

dilaudid was a legitimate incident to defendant's lawful arrest, warrantless arrest of defendant was lawful under general arrest statute, and granting of defendant's motion to suppress marked bills as evidence was error. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 202, 401, 21 U.S.C. §§ 812, 841; D.C. Code § 23-581(a)(1)(A). *United States v. Hamilton*, 390 A.2d 449, 1978 D.C. App. LEXIS 548 (1978).

Where victim or eyewitness furnishes police officer with description of crime which has just occurred and such victim or eyewitness is previously unknown to police officer, such sources may nevertheless be relied upon if information given is sufficiently accurate to lead officer directly to the suspect. *United States v. Malcolm*, 331 A.2d 329, 1975 D.C. App. LEXIS 314 (1975).

Where police officer relies upon information given to him by third person for making an arrest without a warrant, test of propriety of such action depends upon there being some substantial basis for crediting informant's story, and consequently a court confronted with motion to suppress evidence obtained in search incident to such an arrest must be informed of underlying circumstances from which officer concluded that informant was credible. *United States v. Malcolm*, 331 A.2d 329, 1975 D.C. App. LEXIS 314 (1975).

Reasonableness of police officer in according credence to what he has been told by informant may be demonstrated on grounds wholly independent of whatever prior reliability informant had exhibited. *United States v. Malcolm*, 331 A.2d 329, 1975 D.C. App. LEXIS 314 (1975).

Corroboration by police officer of facts furnished him by informant in advance of arrest is sufficient to justify such arrest, irrespective of policeman's prior knowledge of informant's reliability. *United States v. Malcolm*, 331 A.2d 329, 1975 D.C. App. LEXIS 314 (1975).

Where informant supplied police officer with detailed information relating to possession of marijuana by defendant and every aspect of such information, including place, time, and physical appearance, was checked and verified by police officer, police officer had probable cause for arrest. D.C. Code § 33-402. *United States v. Malcolm*, 331 A.2d 329, 1975 D.C. App. LEXIS 314 (1975).

Where police officer was told by another that defendant, whom officer had questioned, had a syringe under wig, officer's momentary stopping of defendant, inquiry about wig, and request to defendant to remove her hat were reasonable, and defendant's denial of wearing a wig and its obvious presence furnished independent observation and corroboration which gave rise to a reasonable basis to arrest defendant and seize contents of her hand, which she had removed from beneath wig and which con-

tained syringe and a bag of methadone, and to seize tin foil pack, which apparently contained heroin, from starch box from which defendant began to eat at police station. D.C. Code §§ 22-3601, 23-581, 33-402; U.S. Const. Amend. 4. *United States v. Oliver*, 297 A.2d 778, 1972 D.C. App. LEXIS 286 (1972).

— **Personal knowledge or observation, probable cause.**

Police must have probable cause to believe that misdemeanor is being committed in their presence in order to make warrantless misdemeanor arrest under District of Columbia law. D.C. Code 1981, § 23-581(a)(1)(B). *United States v. Williams*, 754 F.2d 1001, 1985 U.S. App. LEXIS 28026 (C.A.D.C. 1985).

Probable cause to believe that misdemeanor has just been committed prior to arrival of police does not satisfy District of Columbia's warrantless arrest requirements. D.C. Code 1981, § 23-581(a)(1)(B). *United States v. Williams*, 754 F.2d 1001, 1985 U.S. App. LEXIS 28026 (C.A.D.C. 1985).

Officer did not reasonably, objectively believe that he heard a positive response from defendant to officer's question about whether defendant had marijuana in his pocket, and absent such reasonable belief, officer lacked probable cause to arrest defendant and conduct search incident to that arrest; in response to officer's question, "You're telling me that is not marijuana," defendant responded "yeah," and while officer might have subjectively believed that defendant's "yeah" meant yes, he was carrying marijuana, officer's subjective belief was not the test, and defendant's demeanor and his body language were too ambiguous, and thus too weak, to justify rejection of what defendant did say in favor of what he did not say. *Smith v. United States*, 987 A.2d 432, 2010 D.C. App. LEXIS 2 (2010).

Police had reasonable, articulable suspicion that defendant might be armed or dangerous, as would justify pat-down frisk for weapons; defendant was on front porch of residence, known for narcotics and weapons, where officers had arrived to execute premises search warrant, it was dark when police arrived, defendant was wearing a coat under which a weapon could be concealed, defendant was attempting to leave porch as police arrived, and there were seven or eight people congregated on porch, a number that exceeded the four or five officers who were attending to them. *Germany v. United States*, 984 A.2d 1217, 2009 D.C. App. LEXIS 608 (2009), writ of certiorari denied by 131 S. Ct. 186, 178 L. Ed. 2d 112, 2010 U.S. LEXIS 6730, 79 U.S.L.W. 3199 (U.S. 2010).

A police officer must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. *Duckett*

v. United States, 886 A.2d 548, 2005 D.C. App. LEXIS 626 (2005).

The subjective intent of an arresting officer is simply no basis for invalidating an arrest; those are lawfully arrested whom the facts known to the arresting officers give probable cause to arrest. *Scott v. United States*, 878 A.2d 486, 2005 D.C. App. LEXIS 331 (2005).

An arresting officer's state of mind is irrelevant to the existence of probable cause to arrest, and thus, his subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause. *Scott v. United States*, 878 A.2d 486, 2005 D.C. App. LEXIS 331 (2005).

Officer had probable cause to arrest defendant for committing misdemeanor offense in his presence, such that defendant's arrest was lawful and subsequent search of defendant's person was reasonable within the meaning of the Fourth Amendment; since officer saw defendant urinate on front bumper of van parked in gas station parking lot, officer had probable cause to arrest defendant for disorderly conduct and defacing of private property. *Scott v. United States*, 878 A.2d 486, 2005 D.C. App. LEXIS 331 (2005).

A police officer may detain a person on less than probable cause if the officer has a reasonable suspicion based on specific articulable facts that the person is involved in criminal activity. *In re A.F.*, 875 A.2d 633, 2004 D.C. App. LEXIS 749 (2004).

When a traffic offense is committed in the presence of a police officer, a stop of the vehicle is generally lawful. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

Where police officers lawfully stopped defendant's vehicle for a traffic violation, officer's action of opening door of defendant's vehicle and ordering defendant to get out of vehicle to question him was reasonable and permissible under Fourth Amendment, even though officers had no articulable suspicion of criminal activity of specific reason to believe defendant might have been dangerous. *United States v. Glover*, 851 A.2d 473, 2004 D.C. App. LEXIS 307 (2004).

"Immediately apparent," for purposes of requirement of plain feel doctrine that the incriminating nature of the object perceived to be contraband during the frisk must be immediately apparent to the officer, does not mean that an officer must know for certain that the item felt is contraband, only that there is probable cause to associate the item with criminal activity. *United States v. Glover*, 851 A.2d 473, 2004 D.C. App. LEXIS 307 (2004).

For purposes of determining whether an officer had probable cause to seize an object during a lawful search pursuant to plain feel doctrine, the officer's initial tactile perception of the

object may be informed by the officer's training and experience and other attendant circumstances. *United States v. Glover*, 851 A.2d 473, 2004 D.C. App. LEXIS 307 (2004).

Police officer had probable cause to arrest defendant at moment he emerged from backyard of residence; police officer saw suspected stolen car in his rearview mirror, before investigating further, confirmed stolen car's license plate number, which matched car from which officer observed defendant and his accomplice flee when they surmised that officer was chasing them, and, although officer lost sight of defendant and his accomplice during his pursuit, they were out of officer's sight for only a few seconds, and there were no other people in area. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

Officer had probable cause to arrest defendant, who was the driver of car, based on officer's seeing white rock-like substance, which officer believed to be cocaine, in front of the passenger seat; because defendant was in the driver's seat, a fact from which a reasonable person might infer ownership of the car or at least entitlement to drive it, there was a much stronger likelihood that he was at least in joint constructive possession of the cocaine. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Probable cause to arrest exists where the facts and circumstances within the officers' knowledge warrant a person of reasonable caution in the belief that an offense has been or is being committed. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

In the specific context of a lawful traffic stop, a police officer may search the passenger compartment of an automobile for weapons, even without probable cause, if the police officer possesses a reasonable belief, based on specific and articulable facts, that the suspect is dangerous and may gain immediate control of weapons; however, the search must be limited to those areas in which a weapon may be placed or hidden. *James v. United States*, 829 A.2d 963, 2003 D.C. App. LEXIS 529 (2003).

Police officer's observation of driver's furtive movements of sitting upright, as if to take something from his waistband, and then leaning all the way forward, as if to place that object under his seat, provided reasonable articulable suspicion to believe that driver was armed in light of the totality of the circumstances, and, thus, search of area under the driver's seat did not violate Fourth Amendment; officer had past experience and found gun in similar case, and the driver was in a high crime area and failed to stop and pull over immediately when the officer turned on his emergency lights after seeing traffic violation. *James v. United States*, 829 A.2d 963, 2003 D.C. App. LEXIS 529 (2003).

Presence of money in companion's hand and unknown object in defendant's hand was indicative of two way exchange, and thus, established reasonable inference of sale supporting officers' investigatory stop and detention of defendant; independent, yet complementary and simultaneous actions by defendant and other man, in apparent preparation for sale, gave rise to same inference as actual exchange. *Black v. United States*, 810 A.2d 410, 2002 D.C. App. LEXIS 664 (2002).

Flight of defendant's companion, after officers observed defendant and companion in alley apparently engaged in exchange of money for unknown object, implied guilt of defendant as well as companion, and thus, flight supported reasonableness of officers' investigatory stop and detention of defendant. *Black v. United States*, 810 A.2d 410, 2002 D.C. App. LEXIS 664 (2002).

Reputation of area in which defendant was detained in investigatory stop as high drug trafficking area, while insufficient by itself to justify officers' investigatory stop of defendant after officers observed defendant and companion in apparent exchange in alley, lent support to reasonableness of stop, where there was factual support in record of localized criminal activity, and high-intensity lights had been installed near alley in which defendant was observed, at least in part in response to observed criminal activity. *Black v. United States*, 810 A.2d 410, 2002 D.C. App. LEXIS 664 (2002).

Generally, probable cause to seize physical evidence exists where the facts and circumstances within the arresting officer's knowledge, of which he has reasonably trustworthy information, are sufficient in themselves to warrant a reasonable belief that an offense has been or is being committed. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Although the Fourth Amendment is violated when property is seized in the absence of a warrant issued on the basis of probable cause, the plain view doctrine serves as one exception to this requirement by allowing the warrantless seizure of evidence observed in plain sight when: (1) an officer does not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed; (2) the evidence's incriminating character is immediately apparent; and (3) the officer has a lawful right of access to the object itself. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

If while lawfully engaged in an activity in a particular place, police officers perceive a suspicious object, they may seize it immediately; such a seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

When presented with a readily recognizable object that has innocent as well as illicit uses, the officer's training and experience and other attendant circumstances can inform his or her perception, for purposes of determining whether the officer had probable cause to seize the object during a frisk, pursuant to plain-feel exception to warrant requirement. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Defendant's display of a plastic bag containing a weed substance protruding from his shoe was in plain view, providing officer with probable cause to arrest defendant for possession of a controlled substance in light of fact that no "seizure" had occurred prior to that time, as officer had been lawfully conducting an investigation related to drug complaints when he observed defendant watching an illegal craps game and, thus, was justified in being in position to ask defendant for identification and observe the contraband. *Casey v. United States*, 788 A.2d 155, 2002 D.C. App. LEXIS 1 (2002).

Under the Fourth Amendment's plain view doctrine, a police officer is permitted to seize observable "illegal or evidentiary items" provided the officer has some prior Fourth Amendment justification and probable cause to suspect that the item is connected to criminal activity. *Casey v. United States*, 788 A.2d 155, 2002 D.C. App. LEXIS 1 (2002).

Testimony of experienced officer, who had been involved in more than 100 drug-related arrests, that in area known to be high narcotics area, he observed woman holding currency and defendant holding and displaying object in his hand in manner suggestive of drug transaction, that he had received reports from neighborhood residents that the woman was regularly engaged in "illegal activity," and that defendant and woman attempted to conceal what they had been doing and walked away when officers approached, established "probable cause" for arrest of defendant, though there had been no actual exchange of money for drugs. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. *Jefferson v. United States*, 776 A.2d 576, 2001 D.C. App. LEXIS 137 (2001).

Collective knowledge of three law enforcement officers at the time that one of them stopped defendant and another pedestrian after hearing burglary report from radio dispatcher could be aggregated in determining whether stop was justifiable, even though the officers had not communicated with one another directly or through a dispatcher, where officers had all observed the burglary suspects in small area of city within a few minutes preceding the stop. *McFerguson v. United States*, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub nomine *Worthington v. United States*, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

Police had reasonable suspicion to stop defendant and companion in connection with a burglary allegedly involving two black males, though radio dispatch had indicated one of the burglars was wearing red pants and neither defendant nor companion was wearing red pants at time of stop, where officer making stop had observed the individuals running in a way that suggested they were fleeing something, another officer had earlier observed them when one was reading red pants, and a third officer had seen them running toward parkway where stop occurred. *McFerguson v. United States*, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub nomine *Worthington v. United States*, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

Officers had a reasonable suspicion that defendants were engaged in a drug transaction, and thus, investigatory stop was reasonable in light of the totality of the circumstances, where officers testified as to their experience in recognizing that lip balm containers were commonly used to package cocaine, they observed one defendant hand the other such a container, a personal item not normally shared, one defendant's surprised reaction and immediate disposal of such container upon seeing the officers, and other defendant's covert attempt to repossess or hide container by placing his foot on top of it. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

One of the circumstances properly considered in determining the reasonableness of a Terry stop is the demonstrated expertise of police officers in recognizing distinctive packaging used in the drug trade for smaller quantities, especially when there is evidence describing the arresting officer's experience with the particular packaging. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

Officer's action during Terry stop, in backing one defendant's foot off the lip balm container that defendant was covertly attempting to re-

possess after other defendant dropped it, was related in scope to the original justification for the investigatory stop, considering that the action was taken to confirm officer's suspicion, based his experience that lip balm containers were often used to package cocaine, that the two defendants were involved in a drug transaction. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

An investigative seizure must be reasonably related in scope to the justification for its initiation. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

Officer's observation of defendant's dropping nine plastic bags with white rocks in them while being chased provided officer with probable cause to arrest defendant for possession of crack cocaine. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

The doctrine of plain view justified the seizure of a gun from defendant's car during a valid Terry stop in a police parking lot at two o'clock in the morning; after defendant was asked to step out of the vehicle, police officer, when shining a flashlight in the car, saw the gun in plain view on the driver's side near the spot where defendant's right thigh would have been positioned, which provided the officer with probable cause to seize the gun. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

While collective knowledge of police can give rise to valid arrest, that is so only if arresting officer acts in response to broadcast or other directive which is based on collective information. *Haywood v. United States*, 584 A.2d 552, 1990 D.C. App. LEXIS 301 (1990).

Where arrest is predicated in part on officer's personal observations concerning criminal act, Court of Appeals must examine the information available to that officer in determining whether arrest is valid. *Haywood v. United States*, 584 A.2d 552, 1990 D.C. App. LEXIS 301 (1990).

Where probable cause for warrantless arrest is predicated in part on personal observations of arresting officer, trial court may not rely on facts which were available to other officers at scene unless that information was communicated to arresting officer. *Haywood v. United States*, 584 A.2d 552, 1990 D.C. App. LEXIS 301 (1990).

Court of Appeals cannot justify warrantless arrest of otherwise unidentified citizen in fast moving street scene where that justification is not based on information which arresting officer himself possesses. *Haywood v. United States*, 584 A.2d 552, 1990 D.C. App. LEXIS 301 (1990).

Arresting officer need not have firsthand knowledge of facts giving rise to probable cause provided that he or she is acting at suggestion of someone who does. *Haywood v. United*

States, 584 A.2d 552, 1990 D.C. App. LEXIS 301 (1990).

Where arresting officer had probable cause to believe that defendant was, in officer's presence, committing misdemeanor for which he could serve time in jail, arrest for that misdemeanor was not pretextual, and evidence obtained as result of that arrest was not required to be suppressed in prosecution for unlawful possession of prohibited weapon. D.C. Code 1981, § 22-3214(a). *Alvarez v. United States*, 576 A.2d 713, 1990 D.C. App. LEXIS 138 (1990), writ of certiorari denied by 498 U.S. 875, 111 S. Ct. 203, 112 L. Ed. 2d 164, 1990 U.S. LEXIS 4604, 59 U.S.L.W. 3249 (1990).

Fact that defendant was arrested and charged under statute governing possession of narcotic drug, which provided that no evidence discovered in course of search following arrest without warrant pursuant to that statute would be admissible unless person arrested was at time of arrest violating statute, and that defendant, arrested after having sold drugs, possessed no drugs at time of arrest, did not foreclose basing defendant's arrest and attendant search and seizure upon general arrest statute. D.C. Code §§ 23-581(a)(1)(A), 33-402(a). *United States v. Hamilton*, 390 A.2d 449, 1978 D.C. App. LEXIS 548 (1978).

Where police officer looked into hotel room after door was opened and saw people injecting some substance into themselves, officer had probable cause to believe that individuals inside were injecting narcotics, thereby violating the law, and he had both right and duty to seize contraband and place individuals under arrest. D.C. Code § 23-581(a)(1)(B). *Matthews v. United States*, 335 A.2d 251, 1975 D.C. App. LEXIS 351 (1975).

Where defendant, who had been questioned by officer on another matter, was still in view, three blocks away, when officer, who had been told that defendant had syringe under wig, called for scout car and stopped defendant and asked if she was wearing a wig, defendant had not left officer's presence in such a way as to make inoperative statute permitting arrest without a warrant if officer has probable cause to believe person has committed or is committing an offense in his presence. D.C. Code §§ 22-3601, 23-581. *United States v. Oliver*, 297 A.2d 778, 1972 D.C. App. LEXIS 286 (1972).

Offenses of driving while intoxicated and with no permit were committed in the presence of the arresting officer, making a warrantless arrest lawful within subsection (a)(1)(B) of this section, where the officer arrived on the scene shortly after the accident occurred, observed the vehicle responsible for the accident and the defendant standing a few feet away, was informed by eyewitnesses that the defendant was the driver, obtained a voluntary admission from

the defendant that she was driving at the time of the accident, and observed that no one else could have been the driver of the vehicle causing the accident. *District of Columbia v. Schram*, 112 WLR 165 (Super. Ct. 1984).

Review.

In reviewing a challenge to the legality of a traffic stop, the Court of Appeals defers to the trial judge's material factual findings, but it reviews the ultimate legal conclusion *de novo*. *Duckett v. United States*, 886 A.2d 548, 2005 D.C. App. LEXIS 626 (2005).

Trial court's refusal to seal acquitted defendant's records pertaining to her arrest for failure to obey order of police officer was not an abuse of discretion, where defendant did not prove by clear and convincing evidence that she did not commit offense, and there did not exist some other circumstance that would make it manifestly unjust to decline to seal arrest record. *Sepulveda-Hambor v. District of Columbia*, 885 A.2d 303, 2005 D.C. App. LEXIS 530 (2005).

Appellate court is bound to uphold the trial court's finding that a search was consensual unless such a finding is clearly erroneous. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

A finding that defendant voluntarily consented to search is essentially factual, and therefore, appellate review of such a finding is limited. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

An appellate court reviews *de novo* the trial court's legal conclusions and makes its own independent determination of whether there was either probable cause to arrest or reasonable suspicion justifying a Terry stop. *Milline v. United States*, 856 A.2d 616, 2004 D.C. App. LEXIS 430 (2004).

In determining reasonableness of a Terry stop, the Court of Appeals consider the totality of the circumstances and views the situation through the lens of a reasonable police officer, guided by his training and experience. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

Remand was required to resolve factual dispute over whether defendant, after being lawfully stopped by officers for traffic violation, reached down between his knees when officer opened driver's side door of defendant's vehicle, as such determination was necessary to establish whether officers were justified searching defendant's vehicle for weapons. *Pinkney v. United States*, 851 A.2d 479, 2004 D.C. App. LEXIS 316 (2004).

In judging the reasonableness of the actions of an arresting officer, a court must view the circumstances through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training. *James v. United*

States, 829 A.2d 963, 2003 D.C. App. LEXIS 529 (2003).

Question of whether police had reasonable, articulable suspicion sufficient to justify investigatory stop is one of law which Court of Appeals reviews *de novo*, giving due deference to trial court's findings of fact. *Black v. United States*, 810 A.2d 410, 2002 D.C. App. LEXIS 664 (2002).

A trial court's determination as to whether an officer had reasonable suspicion justifying the investigative stop is a mixed question of law and fact. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

On appeal of a determination of whether an officer was justified in conducting an investigative stop, appellate court defers to the trial court's factual findings unless clearly erroneous, and makes an independent legal assessment as to whether there was reasonable suspicion for the stop. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

In evaluating the reasonableness of an officer's suspicions of criminal activity, for purposes of a Terry stop, a reviewing court must consider the totality of the circumstances, the whole picture. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

Whether a police officer had probable cause to search is ultimately a question of law. *Lewis v. United States*, 767 A.2d 219, 2001 D.C. App. LEXIS 27 (2001).

When reviewing determination that Terry stop was justified, the Court of Appeals gives due deference to the trial court's finding of fact, reviews its legal conclusions *de novo*, and must ensure that it had a substantial basis for concluding that no constitutional violation occurred. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Search, generally.

Search of defendant's jacket, which yielded marijuana, was not beyond the permissible scope of a search incident to arrest; because of the short distance between defendant and the jacket, it was still within his immediate control in the sense that he could have reached it with a lunge if he had wanted to do so, and fact that the jacket was in the actual possession of one of the officers at the time of arrest did not mean that it was within the exclusive control of the police. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

To justify a protective search, the police officer must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous. *Prince v. United States*, 825 A.2d 928, 2003 D.C. App. LEXIS 304 (2003).

Once officer had probable cause to arrest defendant, based on seizure, pursuant to plain-feel exception to search warrant requirement, of medicine bottle that he felt in defendant's pocket while frisking defendant, the officer was also authorized to open the bottle, as a search incident to a valid arrest. *Ball v. United States*, 803 A.2d 971, 2002 D.C. App. LEXIS 387 (2002).

Convenience store employee was not in "custody" during execution of warrant to search store for drugs, and, thus, questions about existence and location of drugs were not custodial interrogation for purposes of *Miranda*, even though a police officer later restrained the employee in handcuffs. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

No flat rule exists that search must be conducted, if at all, on exact spot and at precise moment where suspect is first apprehended. *Alston v. United States*, 518 A.2d 439, 1986 D.C. App. LEXIS 486 (1986).

Search of customer's open tote bag by department store's security officer was valid as directly related to cause of customer's arrest for possible shoplifting, even though tote bag was not searched immediately upon apprehension of customer in park, where customer was moved from public park to privacy of security office across street for further processing, and search took place without any indication of undue delay. *U.S. Const. Amend. 4. Alston v. United States*, 518 A.2d 439, 1986 D.C. App. LEXIS 486 (1986).

The admission of the evidence, including breathalyzer test results and responses to implied consent form, seized as a result of the unlawful arrest of defendant for committing misdemeanor of driving a vehicle while under the influence of alcohol in officer's presence was not harmless. D.C. Code 1981, §§ 23-581(a)(1)(B), 40-716(b)(1). *Schram v. District of Columbia*, 485 A.2d 623, 1984 D.C. App. LEXIS 580 (1984).

Even assuming a reasonable expectation of privacy by shopper as to a "live" merchandise tag in her possession belonging to the store and still attached to merchandise after shopper passed cash register, the search in question by a sensoromatic device, which reacts to live tags, was so limited as to be reasonable and not violative of the Fourth Amendment; the unusually limited nature of the intrusion, weighed against the nature of the threat and the failure experienced in combating it by use of the usual security or investigative countermeasures, ren-

dered the search reasonable. D.C. Code §§ 22-103, 22-2202, 23-581, 23-582; *U.S. Const. Amend. 4. Lucas v. United States*, 411 A.2d 360, 1980 D.C. App. LEXIS 224 (1980).

Police, who had learned of armed assault committed by accused, and who, before entering accused's apartment, heard close of squeaky door, were entitled to make an arrest and effect a limited search for weapons incident thereto and for their own safety, and .38 revolver found in stove which was readily accessible to the three people in the room was admissible against the accused, subsequently identified by the victim, even though the accused was a functional cripple and was not arrested until the pistol had been seized. D.C. Code §§ 22-504, 22-3214(b); *U.S. Const. Amend. 4. United States v. Simpson*, 330 A.2d 756, 1975 D.C. App. LEXIS 305 (1975).

A search or seizure may precede an arrest, provided the officer at that point already had probable cause to arrest the possessor of the items in question. *Waters v. United States*, 311 A.2d 835, 1973 D.C. App. LEXIS 398 (1973).

Seizure incident to arrest.

Searches which were conducted by county jails as standard part of intake process, and which were invasive but did not include any touching of unclothed areas by inspecting officer, struck reasonable balance between inmate privacy and needs of the institutions; Fourth and Fourteenth Amendments did not require that some detainees be exempt from such procedures absent reasonable suspicion of concealed weapon or other contraband. *Florence v. Board of Chosen Freeholders of County of Burlington*, 132 S.Ct. 1510, 2012 U.S. LEXIS 2712 (2012).

Evidence found on defendant's person and in his vehicle, after he was illegally stopped and arrested by a Washington Metropolitan Area Transit Authority (WMATA) police officer for a traffic offense, was inadmissible, where officer mistakenly believed defendant had been on WMATA property when he ran through a stop line on a city street. *United States v. Simon*, 368 F.Supp.2d 73, 2005 U.S. Dist. LEXIS 5357 (2005).

Defendant, who was approached by police while standing on sidewalk and asked if she had any contraband on her person, was not seized within meaning of Fourth Amendment; first officer, on routine patrol, stood two or three feet away from defendant, and second officer was farther away and did not interact with defendant, officers, although wearing police clothing, did not make any motions toward their holstered guns, touch defendant, give orders, or make any "show of authority" which might have suggested that she was not free to leave, and other members of defendant's group walked away unimpeded. *Brown v. United*

States, 983 A.2d 1023, 2009 D.C. App. LEXIS 600 (2009).

Motorists are deemed to be "seized," within the meaning of the Fourth Amendment, in a typical traffic stop because of the temporary detention of the driver and any passengers, and thus, a traffic stop must be reasonable under the circumstances in order to be constitutional. *Basnueva v. United States*, 874 A.2d 363, 2005 D.C. App. LEXIS 255 (2005).

Generally, an arrest is effected when the police have made a determination to charge the suspect with a criminal offense and custody is maintained to permit the arrestee to be formally charged and brought before the court. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

A restraint on liberty which would constitute a seizure under the doctrine of *Terry v. Ohio* does not necessarily place the seized person in custody for *Miranda* purposes. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

A seizure occurs when the police have by word or conduct manifested to the suspect that he is not free to leave, and in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. *Castellon v. United States*, 864 A.2d 141, 2004 D.C. App. LEXIS 681 (2004).

Remand was required for a determination of whether officer's seizure of burlap sack found in underneath driver's seat of lawfully stopped vehicle was permissible under "plain feel" doctrine, as such was necessary in determining whether if evidence of marijuana found in sack would be subject to suppression. *United States v. Glover*, 851 A.2d 473, 2004 D.C. App. LEXIS 307 (2004).

Under the "plain feel doctrine," if a police officer conducting an otherwise lawful search feels an object whose contour or mass makes its identity immediately apparent to him as contraband, the officer may lawfully recover the object. *United States v. Glover*, 851 A.2d 473, 2004 D.C. App. LEXIS 307 (2004).

Custodial pat-down search of juvenile, which revealed cocaine bags, was lawful due to custody, even though neglect custody order provided grounds for arrest; custodial seizures on any ground inherently pose danger to arresting officer. In re *J.O.R.*, 820 A.2d 546, 2003 D.C. App. LEXIS 152 (2003), writ of certiorari denied by 540 U.S. 934, 124 S. Ct. 355, 157 L. Ed. 2d 243, 2003 U.S. LEXIS 7251, 72 U.S.L.W. 3254 (2003).

The danger to the police officer justifying a pat-down or *Terry* search flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest. In re *J.O.R.*, 820 A.2d 546, 2003 D.C. App. LEXIS 152 (2003), writ of certiorari de-

nied by 540 U.S. 934, 124 S. Ct. 355, 157 L. Ed. 2d 243, 2003 U.S. LEXIS 7251, 72 U.S.L.W. 3254 (2003).

Custodial seizures on any ground inherently pose a danger and thus grant officers the right to conduct a pat-down search. In re *J.O.R.*, 820 A.2d 546, 2003 D.C. App. LEXIS 152 (2003), writ of certiorari denied by 540 U.S. 934, 124 S. Ct. 355, 157 L. Ed. 2d 243, 2003 U.S. LEXIS 7251, 72 U.S.L.W. 3254 (2003).

Where there is a challenge to an improper investigative stop, the threshold question is whether a seizure has occurred, and a seizure occurs where the officer by show of authority restrains the liberty of a citizen. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

A seizure, for purposes of an investigative stop, does not occur simply because a law enforcement officer approaches a person on the street and asks him or her questions; the officer may engage in such encounters without violating the Fourth Amendment if the person approached is willing to listen and answer questions. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

In determining whether a person has been seized for purposes of an investigative stop, the crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Where the initial encounter between an officer and an individual is consensual, but progresses to a non-consensual situation, the validity of the seizure may depend upon when the seizure occurred. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Among the factors which may indicate whether a seizure of person has occurred are the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled; such factors must be considered as a whole, under the totality of the circumstances, rather than in isolation. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Totality of circumstances supported finding that defendant was seized, for purposes of investigative stop, when officers asked defendant to turn around and officer touched defendant's jacket; prior to asking defendant to turn around, officers had approached defendant with their guns visible, one officer had been a foot away from defendant, and one officer had asked defendant various questions concerning his

presence in particular area. *Jackson v. United States*, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Officer had probable cause to arrest defendant for his involvement in homicide and had probable cause to seize evidence from defendant's vehicle that resulted from officer's search of vehicle based on plain view exception; officer had received broadcast that vehicle that matched description of defendant's vehicle had been involved in a homicide, and, during lawful investigatory stop of defendant's vehicle, officer observed that defendant had a bloodied lip and had blood on both his chest and pants, observed knife and bloody T-shirt in the back seat, and observed blood on bumper and hood of vehicle. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

A "plain feel" exception to the Fourth Amendment permits warrantless seizures of obvious contraband discovered during the course of a lawfully conducted frisk or search. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

For a seizure of contraband under the "plain feel" exception to the search warrant requirement: (1) the pat-down must be permissible under Terry; (2) the contraband must be detected in the course of the Terry search; and (3) the incriminating nature of the object perceived to be contraband must be immediately apparent to the officer. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

"Immediately apparent," for purposes of the requirement that the incriminating nature of the object perceived to be contraband during the frisk must be immediately apparent to the officer, as element for plain-feel exception to search warrant requirement, does not mean that an officer must know for certain that the item felt is contraband; it means only that there is probable cause to associate the item with criminal activity. *Umanzor v. United*

States, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

Officer's tactile perception of medicine bottle while patting outer surface of defendant's jacket, together with attendant circumstances, provided probable cause for seizure of the bottle during frisk, pursuant to plain-feel exception to warrant requirement; officer had been involved in numerous narcotics arrests and was familiar with packaging of narcotics in medicine bottles, and defendant, contrary to officer's specific order to keep his hands out of his pockets, repeatedly attempted to access jacket pocket containing the bottle. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

An officer's tactile identification of a pill bottle during a frisk, standing alone, does not give rise to probable cause to seize the bottle or open it to reveal its contents pursuant to plain-feel exception to warrant requirement. *Umanzor v. United States*, 803 A.2d 983, 2002 D.C. App. LEXIS 390 (2002), writ of certiorari denied by 540 U.S. 871, 124 S. Ct. 198, 157 L. Ed. 2d 130, 2003 U.S. LEXIS 6952, 72 U.S.L.W. 3240 (2003).

A seizure does not occur simply because a police officer approaches an individual and asks a few questions, for the police can approach a citizen, even without any basis for suspecting him of committing a crime, ask questions and request to see identification; the critical question for Fourth Amendment purposes is whether, considering the circumstances of the encounter, the police conduct would have communicated to a reasonable person that compliance with the request was required. *Casey v. United States*, 788 A.2d 155, 2002 D.C. App. LEXIS 1 (2002).

Officer's conduct in approaching defendant while he was watching an illegal craps game to ask defendant his name and for identification did not, for Fourth Amendment purposes, constitute a "seizure" before the officer spotted contraband in bystander's shoe, where officer displayed no force, and defendant testified that he had not been intimidated, and that he could have walked away. *Casey v. United States*, 788 A.2d 155, 2002 D.C. App. LEXIS 1 (2002).

§ 23-582. Arrests without warrant by other persons.

(a) A special policeman shall have the same powers as a law enforcement officer to arrest without warrant for offenses committed within premises to which his jurisdiction extends, and may arrest outside the premises on fresh pursuit for offenses committed on the premises.

(b) A private person may arrest another —

- (1) who he has probable cause to believe is committing in his presence —
 - (A) a felony; or
 - (B) an offense enumerated in section 23-581(a)(2); or
 - (2) in aid of a law enforcement officer or special policeman, or other person authorized by law to make an arrest.
 - (c) Any person making an arrest pursuant to this section shall deliver the person arrested to a law enforcement officer without unreasonable delay.
- (July 29, 1970, 84 Stat. 630, Pub. L. 91-358, title II, § 210(a); Apr. 30, 1988, D.C. Law 7-104, § 7(e), 35 DCR 147.)

Cross references. — Appointment and compensation of special policemen, see § 5-129.02.

Section references. — This section is referred to in § 23-562.

Prior Codifications. — 1981 Ed., § 23-582. 1973 Ed., § 23-582.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,”

was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Capitol police.

False imprisonment.

Force used to effect arrest.

Private persons’ arrest powers.

— Felonies, private persons’ arrest powers.

— Government action, private persons’ arrest powers.

— In general.

Special police officers.

Capitol police.

Capitol Police had jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds in which they had jurisdiction and, therefore, had right to arrest defendant if he committed a misdemeanor in their presence while they were so acting. D.C. Code 1951, §§ 9-118, 9-126, 9-131. *Andersen v. U.S.*, 132 A.2d 155, 1957 D.C. App. LEXIS 239 (Cr.App. 1957).

Sections 9-115, 9-115.1(c) and *Andersen v. United States*, App. D.C., 132 A.2d 155, aff’d, 253 F.2d 335 (D.C.Cir. 1957), cert. denied, 357 U.S. 930, 78 S. Ct. 1375, 2 L. Ed. 2d 1372 (1958) set the parameters for when members of the Capitol Police can legally make arrests in their capacity as members of the force. Otherwise, when making arrests, members of the Capitol Police stand in the same shoes as ordinary civilians and civilian arrests are regulated by subsection (b) of this section. *United States v. O’Brien*, 116 WLR 2117 (Super. Ct. 1988).

False imprisonment.

Under the law of the District of Columbia, police officers’ alleged conduct of entering

arrestee’s home with arrestee’s consent and arresting him without probable cause or legal justification supported arrestee’s claim for false arrest. *Amons v. District of Columbia*, 231 F.Supp.2d 109, 2002 U.S. Dist. LEXIS 21186 (2002).

The gist of any complaint for false arrest or false imprisonment is an unlawful detention. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

A claim of false arrest does not depend on the subjective state of mind of the plaintiff; rather, the determination whether particular conduct amounts to false imprisonment depends upon the actions and words of the defendant, which must provide a basis for a reasonable apprehension of present confinement. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

A police officer may justify an allegedly false arrest by demonstrating a reasonable and good faith belief that his or her conduct was lawful. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

Although a police officer may justify an arrest on the basis of probable cause, the officer need not prove probable cause in the constitutional sense to defeat a false arrest claim; the officer only needs to demonstrate that he had a good faith belief that his conduct was lawful and that such belief was reasonable. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

Police officer’s refusal to allow business owner to enter premises after another person claimed ownership and called police did not restrain the owner against his will and, there-

fore, was not a "false arrest"; the owner voluntarily complied after the officer told him that he would be arrested if he entered the building. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

Police officer responding to call by one alleged business owner had objectively reasonable basis to warn about a potential trespass charge and prevent another owner from entering the premises after that owner showed a failed attempt to regain possession, and, thus, the officer did not commit false arrest; although the excluded owner had a license and a lease that he had signed for the corporate tenant, the other owner was inside the building and had some papers supporting his claim, and the police imposed the most minimal restraint possible by asking the excluded owner not to return to the building until after a court had decided the matter. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

The elements of a constitutional claim for false arrest are substantially identical to the elements of a common-law false arrest claim; therefore, the constitutional claim cannot stand if the common law claim fails for lack of sufficient evidence. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

In false arrest action, issue of probable cause is mixed question of law and fact and, where facts are in dispute, issue of probable cause is for jury, but where facts are undisputed or clearly established, a question of law arises for court. *Safeway Stores, Inc. v. Kelly*, 448 A.2d 856, 1982 D.C. App. LEXIS 386 (1982).

Probable cause existed for security guard working in grocery store to arrest customer when customer had no constitutional or statutory right to remain on premises against wishes of grocery store manager and, therefore, grocery store could not be held liable for false arrest. *Safeway Stores, Inc. v. Kelly*, 448 A.2d 856, 1982 D.C. App. LEXIS 386 (1982).

Evidence in false imprisonment action by former store employee against his former employer showed, as matter of law, that employer had reasonable cause to detain employee for investigation as to possible discrepancies in employee's department. D.C. Code §§ 4-115, 23-582(a). *Lansburgh's, Inc. v. Ruffin*, 372 A.2d 561, 1977 D.C. App. LEXIS 458 (1977).

Force used to effect arrest.

If person making lawful arrest used excessive force, person arrested may have claim for assault and battery. *Safeway Stores, Inc. v. Kelly*, 448 A.2d 856, 1982 D.C. App. LEXIS 386 (1982).

Private persons' arrest powers.

— Felonies, private persons' arrest powers.

Private citizen may arrest for felony committed in his presence. *Gaither v. United States*,

413 F.2d 1061, 1969 U.S. App. LEXIS 12934 (C.A.D.C. 1969).

Where a felony has been actually committed, the arrest of a person whom there is reasonable cause to suspect committed the crime, by a private individual, without a warrant, is justifiable. *Davis v. U.S.*, 16 App.D.C. 442, 1900 U.S. App. LEXIS 5310 (1900).

A reasonable cause for suspicion that a felony has been committed authorizing an arrest by a private individual without warrant exists where money had been stolen from an express company while in the care of its messenger, the accused, and where a false and counterfeit seal which had been applied to a pouch from which the money was abstracted, in place of the genuine seal, had been made for and delivered to him while in the employ of the company. *Davis v. U.S.*, 16 App.D.C. 442, 1900 U.S. App. LEXIS 5310 (1900).

Since operating a motor vehicle without a permit is not a felony, actions of Washington Metropolitan Area Transit Authority police officer in conducting investigatory stop of defendant who was not on WMATA property could not be justified as a citizen's arrest. D.C. Code 1981, § 40-301(d). *United States v. Foster*, 566 F. Supp. 1403, 1983 U.S. Dist. LEXIS 15608 (1983).

Private citizen can make arrest for felony committed in his presence. *United States v. Mullen*, 278 F. Supp. 410, 1967 U.S. Dist. LEXIS 7422 (1967), affirmed by 416 F.2d 456, 1969 U.S. App. LEXIS 10483 (4th Cir. Va. 1969).

— Government action, private persons' arrest powers.

Congress, by enacting statute codifying citizens' common-law power of arrest, did not intend to make citizens agents of state for purposes of making arrests so as to render Fourth Amendment restrictions applicable to such arrests. D.C. Code § 23-582(b); U.S. Const. Amend. 4. *United States v. Lima*, 424 A.2d 113, 1980 D.C. App. LEXIS 410 (1980).

Fact that private person makes a citizen's arrest does not automatically transform that individual into an agent of the state; his conduct is not actionable for any deprivation, under color of law, of rights, privileges or immunities secured by constitution. 42 U.S.C. § 1983; U.S. Const. Amend. 4. *United States v. Lima*, 424 A.2d 113, 1980 D.C. App. LEXIS 410 (1980).

— In general.

Although a private citizen, except where the rule is changed by statute, has the right to arrest without a warrant one who commits a breach of the peace in his presence, such detention is only until a proper officer of the law is

available. *Lima v. Lawler*, 63 F.Supp. 446, 1945 U.S. Dist. LEXIS 1719 (1945).

Where a private citizen was attempting to hold a member of the naval forces for arrest by local authorities for an alleged law infraction, and a member of the naval shore patrol attempted to take the enlisted man into custody, private citizen was under duty to surrender custody of enlisted man to the naval patrolman and a refusal on his part to do so authorized the naval patrolman to exercise reasonable force to secure the relinquishment of the enlisted man. *Lima v. Lawler*, 63 F.Supp. 446, 1945 U.S. Dist. LEXIS 1719 (1945).

Plaintiffs had no right to make citizens' arrests of district court judges who ruled against their contentions. *Miller v. Johnson*, 541 F. Supp. 1165, 1982 U.S. Dist. LEXIS 14499 (1982).

Private citizen may arrest for misdemeanor involving breaches of peace and felonies when such crimes are committed in his presence. *Singleton v. United States*, 225 A.2d 315, 1967 D.C. App. LEXIS 118 (App. 1967).

Special police officers.

Though special police officers within the District of Columbia are not state actors in all their actions, they act under the color of law, for purposes of §§ 1983, when they undertake to arrest an individual or perform actions related thereto. *Maniaci v. Georgetown Univ.*, 510 F.Supp.2d 50, 2007 U.S. Dist. LEXIS 66236 (2007).

Special police officers, within the District of Columbia, act with the actual authority of the state, for §§ 1983 purposes, when they exercise the power of arrest. *Maniaci v. Georgetown Univ.*, 510 F.Supp.2d 50, 2007 U.S. Dist. LEXIS 66236 (2007).

University police officer, having the same power to arrest as any other law enforcement officer under District of Columbia law, possessed probable cause based on a reasonable belief that an offense had been committed by arrestee, where there was a restraining order filed against the arrestee and a complaint that the order had been violated, notwithstanding officer's alleged failure to investigate arrestee's purported alibi. *Black v. District of Columbia*, 466 F.Supp.2d 177, 2006 U.S. Dist. LEXIS 91639 (2006).

Special police officers are appointed by the mayor of the District of Columbia, and they are commissioned for the special purpose of pro-

tecting property on the premises of the employer, and this commission authorizes special police officers to exercise arrest powers significantly broader than those of ordinary citizens or licensed security guards; in particular, they have the same powers as a law enforcement officer to arrest without warrant for offenses committed within premises to which their jurisdiction extends. *Limpuangthip v. United States*, 932 A.2d 1137, 2007 D.C. App. LEXIS 578 (2007).

Incident in which store security guard restrained person and seized blouse from her purse after viewing her through louvered dressing room door did not involve any government action so as to render Fourth Amendment prohibition against unreasonable searches and seizures applicable to the incident, though District of Columbia required licensing of security guards and had enacted statute codifying citizens' common-law power of arrest. U.S. Const. Amend. 4; D.C. Code §§ 4-115, 23-582(b). *United States v. Lima*, 424 A.2d 113, 1980 D.C. App. LEXIS 410 (1980).

Department store security officer's search of customer's bag for possible shoplifting was subject to Fourth Amendment, as incident involved arrest of a suspect and actions related thereto, the broad "Special Police Officer" power distinguishing SPO from private citizen, where there was testimony that one SPO carried customer's bag from place of arrest back to store, and there was no indication that security officer searched bag solely under own initiative, but did so in presence of at least three SPO's, including her supervisor. U.S. Const. Amend. 4. *Alston v. United States*, 518 A.2d 439, 1986 D.C. App. LEXIS 486 (1986).

Special police officers act as agents or instrumentalities of state in conducting searches and seizures incident to their power to arrest, and thus are subject to restrictions of Fourth Amendment. U.S. Const. Amend. 4; D.C. Code 1981, § 4-114. *Woodward & Lothrop v. Hillary*, 598 A.2d 1142, 1991 D.C. App. LEXIS 261 (1991).

Special police officers acted "under color of state law" in subduing, arresting and detaining customer who entered store after closing time; in acting as public officers, they assumed all powers and liabilities attaching thereto. 42 U.S.C. § 1983. *Woodward & Lothrop v. Hillary*, 598 A.2d 1142, 1991 D.C. App. LEXIS 261 (1991).

Subchapter VI. Authority to Break and Enter Under Certain Conditions.

§ 23-591. Authority to break and enter under certain conditions. [Repealed].

Repealed.

(Oct. 26, 1974, 88 Stat. 1455, Pub. L. 93-481, § 4(a); Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 16.)

Cross references. — Criminal cases, plan for furnishing representation of indigents, violations of this chapter, see § 11-2601.

Prior Codifications. — 1981 Ed., § 23-591.

CHAPTER 7. EXTRADITION AND FUGITIVES FROM JUSTICE.

Sec.

23-701. Warrants for the arrest of fugitives from justice.

23-702. Procedure on arrest of fugitives.

23-703. Failure to appear.

23-704. Extradition.

Sec.

23-705. Removal proceedings and returns to foreign countries not affected.

23-706. Confinement.

23-707. Definitions.

§ 23-701. Warrants for the arrest of fugitives from justice.

Whenever any person who is (1) within the District of Columbia, (2) charged with any offense committed in any State, and (3) liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor of that State, any judge of the Superior Court may, upon complaint on oath or affirmation of any credible witness, setting forth the offense, that the person is a fugitive from justice, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the Superior Court, to answer the complaint.

(July 29, 1970, 84 Stat. 631, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in § 23-702.

Prior Codifications. — 1981 Ed., § 23-701. 1973 Ed., § 23-701.

CASE NOTES

Supplementary testimony.

Deficient showing of substantial charge in papers of demanding state can be supplemented by testimony of person possessing necessary information in order to make sufficient showing. D.C. Code §§ 23-701, 23-704(d). *Tucker v. Commonwealth*, 308 A.2d 783, 1973 D.C. App. LEXIS 335 (1973).

Evidence at extradition hearing, including testimony of affiant as to basis for Virginia warrant, was sufficient to establish probable cause to support rendition. D.C. Code §§ 23-701, 23-704(d). *Tucker v. Commonwealth*, 308 A.2d 783, 1973 D.C. App. LEXIS 335 (1973).

§ 23-702. Procedure on arrest of fugitives.

(a) Any person arrested upon a warrant issued pursuant to section 23-701, or arrested within the District of Columbia as a fugitive from justice without a warrant having been issued, shall be taken before the Criminal Division of the Superior Court for preliminary examination on a complaint charging him as a fugitive.

(b) If, upon the examination of the person charged, it shall appear to the court that there is reasonable cause to believe that the complaint is true and that the person may be lawfully demanded of the chief judge, the person shall be detained or released according to law, in like manner as if the offense had been committed in the District of Columbia, to appear before the court at a future date, allowing thirty days to obtain a requisition from the Governor of the State from which the person is a fugitive. The complaint of fugitivity from another jurisdiction shall create a presumption that the person is unlikely to appear if released, which may be overcome only by clear and convincing proof.

(c) If the person so released or detained shall appear before the court upon

the day ordered, he shall be discharged, unless he shall be demanded by requisition, pursuant to subsection (g) of this section or section 23-704, or unless the court shall find cause to detain or to release him as provided by subsection (b) of this section until a later day; but regardless of whether the person shall be detained or released as provided in subsection (b) of this section or discharged, his delivery to any person authorized by the warrant of the Governor shall be a discharge of any bond or obligation.

(d) The Chief of Police of the Metropolitan Police Department shall give notice to the police official or sheriff of the city or county from which the person is a fugitive that the person is so held in the District of Columbia.

(e) A person detained as provided by this section shall not be detained in jail longer than to allow a reasonable time for the person receiving the notice required by subsection (d) of this section to apply for and obtain a proper requisition for the person detained according to the circumstances of the case and the distance of the place where the offense is alleged to have been committed.

(f)(1) At any time prior to the filing of a requisition, a person arrested pursuant to this section may in open court waive further proceedings pursuant to this chapter.

(2) Following waiver, a judge of the Superior Court may, in his discretion, if the United States attorney consents, release the person upon such conditions as the judge shall deem necessary to insure his appearance before the proper official in the State from which he is a fugitive, and shall otherwise order his return to the jurisdiction of that State in the custody of a proper official.

(3) Following waiver, a person not released pursuant to paragraph (2) of this subsection shall be ordered to return to the jurisdiction from which he is a fugitive in the custody of a proper official, and may be detained to await return.

(4) A person detained pursuant to paragraph (3) of this subsection for more than three days (not including Saturdays, Sundays, and holidays) shall be returned to the court and shall thereupon be released pursuant to paragraph (2) of this subsection, unless the court shall find good reason to extend his detention for an additional three days to obtain the attendance of a proper official of the demanding jurisdiction.

(g) If a person has not waived further proceedings pursuant to subsection (f) of this section, and a requisition from the Governor of the jurisdiction from which the person is a fugitive is presented to the court, the court shall order the requisition to be filed and referred to the chief judge for extradition proceedings pursuant to section 23-704, and shall order the person committed pending those proceedings.

(July 29, 1970, 84 Stat. 631, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Bail, see §§ 16-704 and 23-1301 et seq.

Section references. — This section is referred to in §§ 23-703 and 23-902.

Prior Codifications. — 1981 Ed., § 23-702. 1973 Ed., § 23-702.

§ 23-703. Failure to appear.

Any person released pursuant to section 23-702 who fails to appear as required shall be punished by a fine not exceeding \$5,000 or imprisonment for not more than five years, or both.

(July 29, 1970, 84 Stat. 632, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-703. 1973 Ed., § 23-703.

§ 23-704. Extradition.

(a) In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the chief judge of the Superior Court shall cause to be apprehended and delivered up fugitives from justice who shall be found within the District of Columbia, in the same manner and under the same regulations as the executive authority of a State is required to do by the provisions of chapter 209 of Title 18, United States Code, and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in that delivery.

(b) The chief judge of the Superior Court may also surrender, on demand of the Governor of any State, any person in the District of Columbia charged in that State in the manner provided in subsection (a) of this section with committing an act in the District of Columbia, or in another State, intentionally resulting in a crime in the State whose executive authority is making the demand, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

(c) No person apprehended in accordance with the provisions of subsections (a) and (b) of this section shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken before the chief judge of the Superior Court of the District of Columbia who shall inform him of the demand made for his surrender, and of the crime with which he is charged, and that he has the right to demand and procure legal counsel.

(d) If the person or his counsel shall state that he desires to test the legality of the person's arrest, the chief judge shall hold a hearing to determine whether the person shall be delivered over as demanded. At the hearing, the person shall have the same rights to challenge his detention and extradition as if the hearing were upon a writ of habeas corpus.

(e) If the chief judge shall order the person delivered over, he may appeal, within twenty-four hours, from that order to the District of Columbia Court of Appeals if the chief judge who rendered the order, or a judge of the District of Columbia Court of Appeals, issues a certificate of probable cause. The appeal shall be expedited by the District of Columbia Court of Appeals. An application for a writ of habeas corpus on behalf of a person who is authorized to demand a hearing pursuant to subsection (d) of this section shall not be entertained if it appears that the applicant has failed to demand such a hearing or that the chief judge, after hearing, has ordered him delivered over, unless it also

appears that the remedy by hearing is inadequate or ineffective to test the legality of his detention.

(f) Nothing contained in this subsection shall prevent a person from waiving his right to appear before the chief judge of the Superior Court and voluntarily returning in custody of a proper official to the jurisdiction of the State which is demanding him.

(g) No person demanded by the Governor of a State pursuant to this section shall be released upon bond or other obligation except pursuant to an order of a court of the demanding State.

(h) Any associate judge designated by the chief judge or acting chief judge shall have the same power to act pursuant to this section as the chief judge.

(July 29, 1970, 84 Stat. 632, Pub. L. 91-358, Title II, § 210(a); June 3, 1997, D.C. Law 11-275, § 14(e), 44 DCR 1408; May 22, 1998, D.C. Law 12-114, § 3(b), 45 DCR 486.)

Cross references. — Representation of indigents, see § 11-2601 et seq.

Section references. — This section is referred to in §§ 23-702 and 23-706.

Prior Codifications. — 1981 Ed., § 23-704. 1973 Ed., § 23-704.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No.

11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Legislative history of Law 12-114. — Law 12-114, the "Criminal Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-406, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-233 and transmitted to both Houses of Congress for its review. D.C. Law 12-114 became effective on May 22, 1998.

CASE NOTES

ANALYSIS

Executive function.

Fugitives from justice.

Hearings.

Juveniles.

Mental competence of arrestee.

Procedure.

Supplementary testimony.

Executive function.

In performing his duties of extradition pursuant to statute chief judge is carrying out functions of executive. D.C. Code § 23-704(a, d); U.S. Const. art. 4, § 2, cl. 2. *Martin v. State of Md.*, 287 A.2d 823, 1972 D.C. App. LEXIS 342 (1972).

Fugitives from justice.

Detainee was a "fugitive from justice," as required for his extradition, even if he moved to sending state after his release from prison by court order in demanding state, where he had been erroneously released before completing his sentence for a crime in demanding state.

Walker v. United States, 775 A.2d 1107, 2001 D.C. App. LEXIS 185 (2001).

To establish the person's fugitive status, as required for extradition, it is sufficient for the demanding state to allege that the person has been convicted in the demanding state, but has not completed his sentence. *Walker v. United States*, 775 A.2d 1107, 2001 D.C. App. LEXIS 185 (2001).

Hearings.

Defendant's waiver of his procedural rights under federal extradition rules was not knowing and voluntary, where neither police officers nor waiver form advised defendant accurately about his right to a probable cause hearing, and the purpose of the extradition hearing. *Outlaw v. United States*, 806 A.2d 1192, 2002 D.C. App. LEXIS 516 (2002).

To support a rendition of accused by asylum state to demanding state, it must be shown that he is individual named in writ of extradition, he is substantially charged with a crime in demanding state and he is a fugitive, which is to

say he was in demanding state when crime was committed, and asylum state is to consider no other issues. D.C. Code § 23-704(a, d); U.S. Const. art. 4, § 2, cl. 2. *Martin v. State of Md.*, 287 A.2d 823, 1972 D.C. App. LEXIS 342 (1972).

In conducting extradition hearing, chief judge of superior court should give detainee same rights to challenge his detention and extradition as on writ of habeas corpus. D.C. Code § 23-704(a, d); U.S. Const. art. 4, § 2, cl. 2. *Martin v. State of Md.*, 287 A.2d 823, 1972 D.C. App. LEXIS 342 (1972).

Issues surrounding person's previous arrest and possible suppression of evidence there seized are not proper subject of consideration at extradition proceeding. D.C. Code § 23-704(a, d); U.S. Const. art. 4, § 2, cl. 2. *Martin v. State of Md.*, 287 A.2d 823, 1972 D.C. App. LEXIS 342 (1972).

In extradition proceeding, courts in asylum state will not judge adequacy of demanding state's indictment or consider issues which may appropriately be raised at trial. D.C. Code § 23-704(a, d); U.S. Const. art. 4, § 2, cl. 2. *Martin v. State of Md.*, 287 A.2d 823, 1972 D.C. App. LEXIS 342 (1972).

Extradition proceeding is not a criminal trial but is civil in nature. D.C. Code § 23-704(a, d); U.S. Const. art. 4, § 2, cl. 2. *Martin v. State of Md.*, 287 A.2d 823, 1972 D.C. App. LEXIS 342 (1972).

Even if evidence forwarded to demanding state had been seized in course of illegal arrest in District of Columbia, chief judge of superior court, before ordering extradition, was not required to hold hearing on issue of whether there had been probable cause for the arrest in District of Columbia, whether evidence had been illegally seized or whether the demanding state's indictment was fruit of the illegal arrest. D.C. Code § 23-704(a, d); U.S. Const. art. 4, § 2, cl. 2. *Martin v. State of Md.*, 287 A.2d 823, 1972 D.C. App. LEXIS 342 (1972).

Juveniles.

District's consent to rendition of juvenile to another state under Interstate Compact on Juveniles could not properly be exercised by assistant corporation counsel absent express delegation of such power, nor by trial judge; instead, remand was required to enable trial court to identify "compact administrator" under Compact and to solicit his grant or denial of district's consent to rendition. Code Md.1957, art. 26, § 70-19; art. 41, § 387 et seq.; Interstate Compact on Juveniles, art. V, D.C. Code following § 32-1102; D.C. Code §§ 23-704, 32-1103. In re G.C.S., 360 A.2d 498, 1976 D.C. App. LEXIS 328 (1976).

Mental competence of arrestee.

A minimal level of competency is required

before a fugitive-arrestee can make an informed decision to waive or demand an extradition hearing. *United States v. Hardy*, 121 WLR 621 (Super. Ct. 1993).

A competency screening in the context of an extradition matter should be of a limited nature; the only question is whether the arrestee is competent to waive his or her right to demand an extradition hearing. *United States v. Hardy*, 121 WLR 621 (Super. Ct. 1993).

If the government is able to convince the fact-finder by clear and convincing evidence of the identity, fugitivity, and charge of criminality in the demanding state by extrinsic evidence, and if the requisition papers are in order, thus negating the limited defenses to extradition, determination of the arrestee's mental competence is irrelevant; however, if the government does not meet this burden, determination of the arrestee's competence to assist counsel in his or her defense is necessary, and further examination may be warranted. *United States v. Hardy*, 121 WLR 621 (Super. Ct. 1993).

Procedure.

That detainee was already found guilty beyond a reasonable doubt by the demanding state for the crime which formed the basis of the extradition request ineluctably established that defendant was substantially charged with a crime in demanding state, a prerequisite for extradition. *Walker v. United States*, 775 A.2d 1107, 2001 D.C. App. LEXIS 185 (2001).

Any challenge to the fairness of detainee's reincarceration could be raised before the courts of state demanding his extradition, and thus, detainee was not denied due process by extradition on retake warrant before he could be heard on applicability of demanding state's court order determining by implication that he was erroneously released before completing his sentence for a crime in that state. *Walker v. United States*, 775 A.2d 1107, 2001 D.C. App. LEXIS 185 (2001).

Supplementary testimony.

Deficient showing of substantial charge in papers of demanding state can be supplemented by testimony of person possessing necessary information in order to make sufficient showing. D.C. Code §§ 23-701, 23-704(d). *Tucker v. Commonwealth*, 308 A.2d 783, 1973 D.C. App. LEXIS 335 (1973).

Evidence at extradition hearing, including testimony of affiant as to basis for Virginia warrant, was sufficient to establish probable cause to support rendition. D.C. Code §§ 23-701, 23-704(d). *Tucker v. Commonwealth*, 308 A.2d 783, 1973 D.C. App. LEXIS 335 (1973).

§ 23-705. Removal proceedings and returns to foreign countries not affected.

Nothing contained in this chapter shall repeal, modify, or in any way affect existing law concerning the procedure for the return of any person apprehended in the District of Columbia to a Federal judicial district to answer a Federal charge, or repeal, modify, or affect existing law or treaty concerning the return to a foreign country of a person apprehended or detained in the District of Columbia as a fugitive from a foreign country.

(July 29, 1970, 84 Stat. 633, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-705. 1973 Ed., § 23-705.

§ 23-706. Confinement.

(a) The agent of the demanding State to whom the prisoner may have been delivered in accordance with the provisions of section 23-704, may, when necessary, confine the prisoner in a facility of the District of Columbia Department of Corrections, and the Department of Corrections must receive and safely keep the prisoner for such reasonable time as will enable the officer or person having charge of him to proceed on his route, such officer or person being chargeable with the expense of keeping.

(b) The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in the other State, and who is passing through the District of Columbia with a prisoner for the purpose of immediately returning the prisoner to the demanding State, may, when necessary, confine the prisoner in a facility of the Department of Corrections. The Department of Corrections must receive and safely keep the prisoner for such reasonable time as will enable the officer or agent to proceed on his route, such officer or agent being chargeable with the expense of keeping. That officer or agent shall produce and show to the Department of Corrections satisfactory written evidence of the fact that he is actually transporting the prisoner to the demanding State after a requisition by the executive authority of the demanding State. The prisoner shall not be entitled to demand a new requisition while in the District of Columbia.

(July 29, 1970, 84 Stat. 633, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-706. 1973 Ed., § 23-706.

§ 23-707. Definitions.

For purposes of this chapter —

(1) the term “State” includes any territory or possession of the United States; and

(2) the term “Governor” means the executive authority of a State.
(July 29, 1970, 84 Stat. 634, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-707. 1973 Ed., § 23-707.

CHAPTER 9. FRESH PURSUIT.

Sec.

23-901. Arrests in the District of Columbia by officers of other States.

Sec.

23-902. Hearing; commitment; discharge.
23-903. "Fresh pursuit" defined.**§ 23-901. Arrests in the District of Columbia by officers of other States.**

Any member of a duly organized peace unit of any State (or county or municipality thereof) of the United States who enters the District of Columbia in fresh pursuit and continues within the District of Columbia in fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in such State shall have the same authority to arrest and hold that person in custody as has any member of any duly organized peace unit of the District of Columbia to arrest and hold in custody a person on the ground that he is believed to have committed a felony in the District of Columbia. This section shall not be construed so as to make unlawful any arrest in the District of Columbia which would otherwise be lawful.

(July 29, 1970, 84 Stat. 634, Pub. L. 91-358, title II, § 210(a); June 3, 1997, D.C. Law 11-275, § 14(e), 44 DCR 1408; May 22, 1998, D.C. Law 12-114, § 3(b), 45 DCR 486.)

Section references. — This section is referred to in §§ 23-581 and 23-902.

Prior Codifications. — 1981 Ed., § 23-901.
1973 Ed., § 23-901.

CASE NOTES

ANALYSIS

Assault.

Automobile theft.

Assault.

If a police officer from another jurisdiction enters the District of Columbia in fresh pursuit of defendant, who is believed to have committed a felony in that jurisdiction, the defendant may be convicted of assault on a police officer for acts against that police officer occurring within the District of Columbia. D.C. Code 1981, §§ 22-505, 23-901. *Watkins v. United States*, 724 A.2d 1200, 1999 D.C. App. LEXIS 22 (1999).

Virginia police became a "police force operating in the District of Columbia" when they entered the District of Columbia in fresh pursuit of defendant, who was suspected of having

committed the felony offense of burglary, and therefore, defendant could be convicted of assaulting a Virginia police officer who was in the District of Columbia. D.C. Code 1981, §§ 22-505, 23-901. *Watkins v. United States*, 724 A.2d 1200, 1999 D.C. App. LEXIS 22 (1999).

Automobile theft.

Fresh pursuit statute, which gives police officer from another state same authority as District police officer to arrest individual suspected of committing felony, did not apply in prosecution for unauthorized use of motor vehicle (UUV) since pursuit and arrest involved Capitol Police officer inside district, rather than pursuit into District by officer from state. D.C. Code 1981, §§ 22-3815(b), 23-901, 23-903. In re C.A.P., 633 A.2d 787, 1993 D.C. App. LEXIS 278 (1993).

§ 23-902. Hearing; commitment; discharge.

If an arrest is made in the District of Columbia by an officer of another State in accordance with the provisions of section 23-901, he shall without unnecessary delay take the person arrested before a judge of the Superior Court of the

District of Columbia, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, he shall order the release or detention of the person arrested, pursuant to section 23-702, to await for a reasonable time a requisition from the Governor of the State demanding the extradition of the person arrested. If the judge determines that the arrest was unlawful he shall order the person discharged.

(July 29, 1970, 84 Stat. 634, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-902. 1973 Ed., § 23-902.

CASE NOTES

Waiver of extradition.

In homicide prosecution, trial court's finding that defendant's consent to accompany Maryland officers from District of Columbia where he was arrested back to Maryland without

extradition hearing was not voluntary under all circumstances was not clearly erroneous. D.C. Code §§ 23-902, 23-903. *United States v. Holmes*, 380 A.2d 598, 1977 D.C. App. LEXIS 289 (1977).

§ 23-903. "Fresh pursuit" defined.

For purposes of this chapter, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, also the pursuit of a person who has committed a felony or one who the pursuing officer has reasonable grounds to believe has committed a felony. It shall also include the pursuit of a person who the pursuing officer has reasonable grounds to believe has committed a felony, although no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Such term shall not necessarily imply an instant pursuit, but pursuit without unreasonable delay.

(July 29, 1970, 84 Stat. 634, Pub. L. 91-358, title II, § 210(a); Apr. 30, 1988, D.C. Law 7-104, § 7(f), 35 DCR 147.)

Prior Codifications. — 1981 Ed., § 23-903. 1973 Ed., § 23-903.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

CASE NOTES

Automobile theft.

Fresh pursuit statute, which gives police officer from another state same authority as District police officer to arrest individual suspected of committing felony, did not apply in prosecution for unauthorized use of motor ve-

hicle (UUV) since pursuit and arrest involved Capitol Police officer inside district, rather than pursuit into District by officer from state. D.C. Code 1981, §§ 22-3815(b), 23-901, 23-903. In re C.A.P., 633 A.2d 787, 1993 D.C. App. LEXIS 278 (1993).

CHAPTER 11. PROFESSIONAL BONDSMEN.

Sec.

23-1101. Definitions.

23-1102. Bonding business impressed with public interests.

23-1103. Procuring business through official or attorney for a consideration prohibited.

23-1104. Attorneys procuring employment through official or bondsman for a consideration prohibited.

23-1105. Receiving other than regular fee for bonding prohibited; bondsmen prohibited from endeavoring to secure dismissal or settlement.

23-1106. Posting names of authorized bondsmen; list to be furnished prisoners; prisoners may communicate with bondsmen; record to be kept by police.

Sec.

23-1107. Bondsmen prohibited from entering place of detention unless requested by prisoner; record of visit to be kept.

23-1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications.

23-1109. Giving advance information of proposed raid prohibited.

23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations.

23-1111. Penalties.

23-1112. Enforcement.

§ 23-1101. Definitions.

For purposes of this chapter —

(1) the term “bonding business” means the business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia; and

(2) the term “bondsman” means any person or corporation engaged in the bonding business either as a principal or as an agent, clerk, or representative of another engaged in such business.

(July 29, 1970, 84 Stat. 635, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Bail, see §§ 16-704 and 23-1301 et seq. 1973 Ed., § 23-1101.

Prior Codifications. — 1981 Ed., § 23-1101.

CASE NOTES

State action.

Bounty hunter and bail bondsman who searched defendant's apartment were private actors with contractual relationship with defendant, who had jumped bail, and thus were not controlled by evidence gathering guidelines applicable to state action under Fourth Amendment. U.S. Const.Amend. 4. *Akins v. United States*, 679 A.2d 1017, 1996 D.C. App. LEXIS 119 (1996).

Absent specific encouragement or involvement by law enforcement officers to recover evidence while in pursuit of principal, neither bail bondsman nor bondsman's bounty hunter agent is bound by constraints of Fourth Amendment. U.S. Const.Amend. 4. *Akins v. United States*, 679 A.2d 1017, 1996 D.C. App. LEXIS 119 (1996).

§ 23-1102. Bonding business impressed with public interests.

The bonding business is impressed with a public interest.

(July 29, 1970, 84 Stat. 635, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1102. 1973 Ed., § 23-1102.

§ 23-1103. Procuring business through official or attorney for a consideration prohibited.

It shall be unlawful for any bondsman, either directly or indirectly, to give, donate, lend, contribute, or to promise to give, donate, lend, or contribute any money, property, entertainment, or other thing of value whatsoever to any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, or other attachè of a criminal court, or public official of any character, for procuring or assisting in procuring any person to employ the bondsman to execute as surety any bond for compensation in any criminal case in the District of Columbia. It shall be unlawful for any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, bailiff, or other attachè of a criminal court, or public official of any character, to accept or receive from a bondsman any money, property, entertainment, or other thing of value whatsoever for procuring or assisting in procuring a person to employ a bondsman to execute as surety any bond for compensation in a criminal case in the District of Columbia.

(July 29, 1970, 84 Stat. 635, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1103. 1973 Ed., § 23-1103.

§ 23-1104. Attorneys procuring employment through official or bondsman for a consideration prohibited.

It shall be unlawful for any attorney at law, either directly or indirectly, to give, loan, donate, contribute, or to promise to give, loan, donate, or contribute any money, property, entertainment, or other thing of value whatsoever to, or to split or divide any fee or commission with, any bondsman, police officer, deputy United States marshal, probation officer, bailiff, clerk, or other attachè of any criminal court for causing or procuring or assisting in causing or procuring a person to employ the attorney to represent him in a criminal case in the District of Columbia.

(July 29, 1970, 84 Stat. 635, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1104. 1973 Ed., § 23-1104.

§ 23-1105. Receiving other than regular fee for bonding prohibited; bondsmen prohibited from endeavoring to secure dismissal or settlement.

It shall be lawful to charge for executing a bond in a criminal case in the District of Columbia, but it shall be unlawful for a bondsman, either directly or

indirectly, to charge, accept, or receive a sum of money, or other thing of value, other than the regular fee for bonding, from a person for whom he has executed bond, for any other service whatever performed in connection with any indictment, information, or charge upon which the person is bailed or held in the District of Columbia. It also shall be unlawful for any bondsman to settle, or attempt to settle, or to procure or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the District of Columbia, with a court, or with the prosecuting attorney in a court in the District of Columbia.

(July 29, 1970, 84 Stat. 636, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1105. 1973 Ed., § 23-1105.

§ 23-1106. Posting names of authorized bondsmen; list to be furnished prisoners; prisoners may communicate with bondsmen; record to be kept by police.

A typewritten or printed list alphabetically arranged of all persons engaged under the authority of any of the courts of criminal jurisdiction in the District of Columbia in the business of becoming surety upon bonds for compensation in criminal cases shall be posted in a conspicuous place in each police precinct, jail, prisoner's dock, house of detention, and every other place in the District of Columbia in which persons in custody of the law are detained, and one or more copies thereof kept on hand; and when a person who is detained in custody in a place of detention shall request a person in charge thereof to furnish him the name of a bondsman, or to put him in communication with a bondsman, the list shall be furnished to the person in charge of the place of detention within a reasonable time to put the person detained in communication with the bondsman selected, and the person in charge of the place of detention shall contemporaneously with that transaction make in the blotter or book of record kept in the place of detention, a record showing the name of the person requesting the bondsman, the offense with which the person is charged, the time at which the request was made, the bondsman requested, and the person by whom the bondsman was called, and preserve that as a permanent record in the book or blotter in which entered.

(July 29, 1970, 84 Stat. 636, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1106. 1973 Ed., § 23-1106.

§ 23-1107. Bondsmen prohibited from entering place of detention unless requested by prisoner; record of visit to be kept.

It shall be unlawful for a bondsman to enter a police precinct, jail, prisoner's

dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia for the purpose of obtaining employment as a bondsman, without having been previously called by a person detained or by some relative or other authorized person acting for or on behalf of the person detained. Whenever a bondsman enters a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia, he shall forthwith give to the person in charge thereof his mission there and the name of the person calling him and requesting him to come to such place. That information shall be recorded by the person in charge of the place of detention and preserved as a public record, and the failure of the bondsman to give that information, or the failure of the person in charge of the place of detention to make and preserve a record of that information, shall constitute a violation of this chapter.

(July 29, 1970, 84 Stat. 636, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1107. 1973 Ed., § 23-1107.

§ 23-1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications.

(a) It shall be the duty of the United States District Court for the District of Columbia and the Superior Court of the District of Columbia, each, to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which the business shall be carried on, and no person or corporation shall, either as principal, or as agent, clerk, or representative of another, engage in the bonding business in either court until he shall, by order of the court, be authorized to do so. The courts, in making these rules and regulations, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the bonding business, who has ever been convicted of an offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of the courts to require every person qualifying to engage in the bonding business as principal to file with the court a list showing the name, age, and residence of each person employed by the bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of these persons stating that he will abide by the terms and provisions of this chapter. Each of the courts shall require the authority of each of those persons to be renewed from time to time at such periods as the court may by rule provide, and before the authority shall be renewed the court shall require from each of those persons an affidavit that

since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of the affidavits shall be guilty of perjury.

(b) Each court shall prescribe such rules and regulations as may be necessary to insure that whenever a bondsman becomes surety for compensation upon a bond in a criminal case before the court, the bondsman shall make a record, which shall be accurate to the best of the maker's knowledge and belief and shall thereafter be open for inspection by the court or its designated representative, and by the designated representative of other law enforcement agencies of the District of Columbia, of the following matters:

(1) the full name and address of the person for whom the bond is executed (referred to in this subsection as the "defendant") and the full name and address of his employer, if any;

(2) the offense with which the defendant is charged;

(3) the name of the court or officer authorizing the defendant's admission to bail;

(4) the amount of the bond;

(5) the name of the person who called the bondsman, if other than the defendant;

(6) the amount of the bondsman's charge for executing the bond;

(7) the full name and address of the person to whom the bondsman presented his bill for the charge;

(8) the full name and address of the person paying the charge; and

(9) the manner of payment of the charge.

Whoever violates any rule or regulation prescribed under this subsection shall be fined not more than \$500 or imprisoned not more than six months, or both, and if he is a bondsman shall be disqualified from thereafter engaging in any manner in the bonding business for such period of time as the trial judge shall order.

(July 29, 1970, 84 Stat. 637, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Penalty for perjury, 1973 Ed., § 23-1108.
see § 22-2402.

Prior Codifications. — 1981 Ed., § 23-1108.

§ 23-1109. Giving advance information of proposed raid prohibited.

It shall be unlawful for any police officer or other public official, in advance of any raid by police or other peace officers or public officials or the execution of any search warrant or warrant of arrest, to give or furnish, either directly or indirectly, any information concerning the proposed raid or arrest to any person engaged in any manner in the bonding business, or to any attorney at law; but it shall not be unlawful for any police or other peace officer, in conducting any raid or in executing any search warrant or warrant of arrest, to communicate to any attorney at law or person engaged in the bonding business, any fact necessary to enable the officer to obtain from the attorney at

law or person engaged in the bonding business information necessary to enable the officer to carry out the raid or execute the process.

(July 29, 1970, 84 Stat. 638, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1109. 1973 Ed., § 23-1109.

§ 23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations.

(a) The judges of the Superior Court of the District of Columbia shall have the authority to appoint some official of the Metropolitan Police Department to act as a clerk of the court with authority to take bail or collateral from persons charged with offenses triable in the Superior Court at all times when the court is not open and its clerks accessible. The official so appointed shall have the same authority at those times with reference to taking bonds or collateral as the clerk of the Municipal Court had on March 3, 1933; shall receive no compensation for these services other than his regular salary; shall be subject to the orders and rules of the Superior Court in discharge of his duties, and may be removed as the clerk at any time by the judges of the court. The United States District Court for the District of Columbia shall have power to authorize the official appointed by the Superior Court to take bond of persons arrested upon writs and process from that court in criminal cases between 4 o'clock postmeridian and 9 o'clock antemeridian and upon Sundays and holidays, and shall have power at any time to revoke the authority granted by it.

(b)(1) An officer or member of the Metropolitan Police Department who arrests without a warrant a person for committing a misdemeanor may, instead of taking him into custody, issue a citation requiring the person to appear before an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court.

(2) Whenever a person is arrested without a warrant for committing a misdemeanor and is booked and processed pursuant to law, an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

(3) No citation may be issued under paragraph (1) or (2) unless the person authorized to issue the citation has reason to believe that the arrested person will not cause injury to persons or damage to property and that he will make an appearance in answer to the citation.

(4) Whoever willfully fails to appear as required in a citation, shall be fined not more than the maximum provided for the misdemeanor for which such citation was issued or imprisoned for not more than 180 days, or both. Prosecution under this paragraph shall be by the prosecuting officer responsible for prosecuting the offense for which the citation is issued.

(July 29, 1970, 84 Stat. 638, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(a), 41 DCR 2608.)

Prior Codifications. — 1981 Ed., § 23-1110.

1973 Ed., § 23-1110.

Emergency legislation. — For temporary amendment of section, see § 101(a) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — Law 10-151, the "Omnibus Criminal Justice Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings

on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Editor's notes. — Capitol Police Citation Release: For designation of a member of the Capitol Police to have responsibility for citation release, and to take bail, collateral, or bond in the same manner as an official of the Metropolitan Police Department of the District of Columbia under this section, see § 108 of Pub. L. 104-186, 110 Stat. 1719.

CASE NOTES

ANALYSIS

Construction and application.
Custody and disposition of prisoners.
Post and forfeiture procedure.
Searches.

Construction and application.

Ordinarily a person arrested for an offense for which he may post bond or collateral is brought immediately to the Superior Court for that purpose, and if Superior Court is not in session, the stationhouse clerks who have the function of "booking" offenders serve also as acting clerks of the Superior Court and are therefore authorized to accept collateral or bond, but such stationhouse clerks have no discretion to either increase or decrease the amount of bond or collateral required by court rules. D.C. Code §§ 23-610, 23-1110(a). *United States v. Robinson*, 471 F.2d 1082, 1972 U.S. App. LEXIS 6950 (C.A.D.C. 1972), reversed by 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427, 1973 U.S. LEXIS 21, 66 Ohio Op. 2d 202 (1973).

Custody and disposition of prisoners.

Period of detention that is "reasonable" between arrest and booking and collateral-posting process varies with the circumstances. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

It was error to order District of Columbia police officials to formulate a comprehensive manual of policies to be followed in dealing with mass demonstrations absent showing that police officials directed, authorized or approved use of excessive force, any showing that it was department policy to detain prisoners an unreasonable time or deny them adequate medical treatment or that delay in booking was due to anything other than a great number of arrests in prior demonstrations, notwithstanding that in individual cases mistakes may have been made. *Washington Mobilization Commit-*

tee v. Cullinane, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Post and forfeiture procedure.

The "post and forfeiture" procedure in minor criminal or traffic offenses (1) is duly authorized by both statute and rule of court as an appropriate and legal method of terminating such cases, (2) is not an inchoate right, but a privilege recognized by law, court fiat, and longstanding practice, and (3) may be objected to by the government when requested by a given defendant, or even revoked at a later date. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

The theory behind the "post and forfeiture" process is that in cases of most petty offenses, the defendant is permitted to "post" a security upon release to ensure his return to court for a prospective trial, but then in lieu of appearing for trial, he may then "forfeit" the collateral as a kind of vicarious fine paid, without admitting or adjudicating any criminal or other liability. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

The legislative branch has established the principle of "posting and forfeiting" collateral, but has left it to the judicial branch, which sets bonds as part of its intrinsic powers and duties, to promulgate a schedule of bond and collateral amounts for various petty offenses and infractions. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

The "post and forfeiture" procedure is not a right, but a privilege extended as a matter of pragmatic resolution of the vast corpus of cases coming before the superior courts. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

Searches.

The official who is called upon to make the determinations involved in decision on incarceration—the arrangements for bail, the possibility of a citation issued at the stationhouse—must make that decision before it may be used

to justify an intrusion on privacy as one permissible under the Fourth Amendment; the mere possibility that such a search might later be justified cannot serve to eliminate accused's rights under the Fourth Amendment at time of arrest. U.S. Const. Amend. 4; D.C. Code § 23-

1110(b)(2, 3). *United States v. Robinson*, 471 F.2d 1082, 1972 U.S. App. LEXIS 6950 (C.A.D.C. 1972), reversed by 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427, 1973 U.S. LEXIS 21, 66 Ohio Op. 2d 202 (1973).

§ 23-1111. Penalties.

Any person violating any provision of this chapter shall be fined not less than \$50 nor more than \$100, or imprisoned for not less than ten nor more than sixty days, or both, where no other penalty is provided by this chapter; and if the person so convicted is (1) a police officer or other public official, he shall upon recommendation of the trial judge also be forthwith dismissed from office, (2) a bondsman, he shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge shall order, or (3) an attorney at law, he shall be subject to suspension or disbarment as attorney at law.

(July 29, 1970, 84 Stat. 639, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1111. 1973 Ed., § 23-1111.

§ 23-1112. Enforcement.

It shall be the duty of the Superior Court and of the United States District Court for the District of Columbia to see that this chapter is enforced, and upon the impaneling of each grand jury in the District of Columbia it shall be the duty of the judge impaneling such jury to charge it to investigate the manner in which this chapter is enforced and all violations thereof in connection with the matter under investigation by such jury.

(July 29, 1970, 84 Stat. 639, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Court Services and Offender Supervision Agency, administration of the Pretrial Services Agency, see § 24-133.

Prior Codifications. — 1981 Ed., § 23-1112. 1973 Ed., § 23-1112.

CHAPTER 13. BAIL AGENCY [PRETRIAL SERVICES AGENCY] AND PRETRIAL DETENTION.

Subchapter I. District of Columbia Bail Agency [Pretrial Services Agency]

Sec.

- 23-1301. Pretrial Services Agency for the District of Columbia.
- 23-1302. Definitions.
- 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations.
- 23-1304. Executive committee; composition; appointment and qualifications of Director.
- 23-1305. Duties of director; compensation.
- 23-1306. Chief assistant and other agency personnel; compensation.
- 23-1307. Annual reports.
- 23-1308. Appropriation; budget.
- 23-1309. References to "Bail Agency" deemed to be to "Pretrial Services Agency."

Sec.

Subchapter II. Release and Pretrial Detention

- 23-1321. Release prior to trial.
- 23-1322. Detention prior to trial.
- 23-1323. Detention of addict.
- 23-1324. Appeal from conditions of release.
- 23-1325. Release in first degree murder, second degree murder, and assault with intent to kill while armed cases or after conviction.
- 23-1326. Release of material witnesses.
- 23-1327. Penalties for failure to appear.
- 23-1328. Penalties for offenses committed during release.
- 23-1329. Penalties for violation of conditions of release.
- 23-1330. Contempt.
- 23-1331. Definitions.
- 23-1332. Applicability of subchapter.
- 23-1333. Consideration of juvenile history.

Subchapter I. District of Columbia Bail Agency [Pretrial Services Agency].

§ 23-1301. Pretrial Services Agency for the District of Columbia.

The Pretrial Services Agency for the District of Columbia (hereafter in this subchapter referred to as the "agency") shall continue in the District of Columbia and shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police Department issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made.

(July 29, 1970, 84 Stat. 639, Pub. L. 91-358, title II, § 210(a); Sept. 27, 1978, 92 Stat. 753, Pub. L. 95-388, §§ 1, 2; June 3, 2011, D.C. Law 18-377, § 16, 58 DCR 1174.)

Cross references. — Bail and collateral security, see § 16-704.

Prior Codifications. — 1981 Ed., § 23-1301.

1973 Ed., § 23-1301.

Effect of amendments. — D.C. Law 18-377 substituted "Pretrial Services Agency for the District of Columbia" for "District of Columbia Pretrial Services Agency".

Emergency legislation. — For temporary (90 day) enactments, see §§ 601 and 602 of Enhanced Crime Prevention and Abatement

Emergency Amendment Act of 2006 (D.C. Act 16-446, July 21, 2006, 53 DCR 6477).

For temporary (90 day) amendment of section, see § 516 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 516 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 23-546.

CASE NOTES

Confidentiality.

Operations of District of Columbia pretrial service agency are governed by the confidentiality restrictions of the District of Columbia Code and not by the provisions of the Pretrial Services Act of 1982. D.C. Code 1981, § 23-

1301 et seq.; 18 U.S.C. §§ 3152-3156. *United States v. Cicero*, 22 F.3d 1156, 1994 U.S. App. LEXIS 10245 (C.A.D.C. 1994), writ of certiorari denied by 513 U.S. 905, 115 S. Ct. 270, 130 L. Ed. 2d 188, 1994 U.S. LEXIS 6810, 63 U.S.L.W. 3266 (1994).

§ 23-1302. Definitions.

As used in this chapter —

(1) the term “judicial officer” means, unless otherwise indicated, the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, United States District Court for the District of Columbia, the Superior Court of the District of Columbia or any justice or judge of those courts or a United States commissioner or magistrate; and

(2) the term “bail determination” means any order by a judicial officer respecting the terms and conditions of detention or release (including any order setting the amount of bail bond or any other kind of security) made to assure the appearance in court of —

(A) any person arrested in the District of Columbia; or

(B) any material witness in any criminal proceeding in a court referred to in paragraph (1) of this section.

(July 29, 1970, 84 Stat. 640, Pub. L. 91-358, title II, § 210(a).)

Section references. — This section is referred to in § 23-1303.

1973 Ed., § 23-1302.

Prior Codifications. — 1981 Ed., § 23-1302.

§ 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations.

(a) The agency shall, except when impracticable, interview any person detained pursuant to law or charged with an offense in the District of Columbia who is to appear before a judicial officer or whose case arose in or is before any court named in section 23-1302(1). The interview, when requested by a judicial officer, shall also be undertaken with respect to any person charged with intoxication or a traffic violation. The agency shall seek independent verification of information obtained during the interview, shall secure any such person’s prior criminal record which shall be made available by the Metropolitan Police Department, and shall prepare a written report of the information for submission to the appropriate judicial officer. The report to the

judicial officer shall, where appropriate, include a recommendation as to whether such person should be released or detained under any of the conditions specified in subchapter II of this chapter. If the agency does not make a recommendation, it shall submit a report without recommendation. The agency shall provide copies of its report and recommendations (if any) to the United States attorney for the District of Columbia or the Corporation Counsel of the District of Columbia [Attorney General for the District of Columbia], and to counsel for the person concerning whom the report is made. The report shall include but not be limited to information concerning the person accused, his family, his community ties, residence, employment, and prior criminal record, and may include such additional verified information as may become available to the agency.

(b) With respect to persons seeking review under subchapter II of this chapter of their detention or conditions of release, the agency shall review its report, seek and verify such new information as may be necessary, and modify or supplement its report to the extent appropriate.

(c) The agency, when requested by any appellate court or a judge or justice thereof, or by any other judicial officer, shall furnish a report as provided in subsection (a) of this section respecting any person whose case is pending before any such appellate court or judicial officer or in whose behalf an application for a bail determination shall have been submitted.

(d) Any information contained in the agency's files, presented in its report, or divulged during the course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding, but such information may be used in proceedings under sections 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceeding.

(e) The agency, when requested by a member or officer or designated civilian employee of the Metropolitan Police Department acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer or designated civilian employee a report as provided in subsection (a) of this section.

(f) The preparation and the submission by the agency of its report as provided in this section shall be accomplished at the earliest practicable opportunity.

(g) A judicial officer in making a bail determination shall consider the agency's report and its accompanying recommendation, if any. The judicial officer may order such detention or may impose such terms and set such conditions upon release, including requiring the execution of a bail bond with sufficient solvent sureties as shall appear warranted by the facts, except that such judicial officer may not order any detention or establish any term or condition for release not otherwise authorized by law.

(h) The agency shall —

(1) supervise all persons released on nonsurety release, including release on personal recognizance, personal bond, nonfinancial conditions, or cash deposit or percentage deposit with the registry of the court;

(2) make reasonable effort to give notice of each required court appearance to each person released by the court;

(3) serve as coordinator for other agencies and organizations which serve or may be eligible to serve as custodians for persons released under supervision and advise the judicial officer as to the eligibility, availability, and capacity of such agencies and organizations;

(4) assist persons released pursuant to subchapter II of this chapter in securing employment or necessary medical or social services;

(5) inform the judicial officer and the United States attorney for the District of Columbia or the Corporation Counsel of the District of Columbia [Attorney General for the District of Columbia] of failure to comply with pretrial release conditions or the arrest of persons released under its supervision and recommend modifications of release conditions when appropriate;

(6) prepare, in cooperation with the United States marshal for the District of Columbia and the United States attorney for the District of Columbia, such pretrial detention reports as are required by Rule 46 (h) of the Federal Rules of Criminal Procedure; and

(7) perform such other pretrial functions as the executive committee may, from time to time, assign.

(July 29, 1970, 84 Stat. 640, Pub. L. 91-358, Title II, § 210(a); June 12, 1999, D.C. Law 12-284, § 8(c), 46 DCR 1328.)

Prior Codifications. — 1981 Ed., § 23-1303.

1973 Ed., § 23-1303.

Temporary Amendment of Section. — Section 8(c) of D.C. Law 12-(Act 12-492), in (e), inserted “or designated civilian employee” twice, and added “of this section.”

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 3(b) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and see § 3(b) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

For temporary amendment of section, see § 3 of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 3(a) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and § 3(a) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

For temporary amendment of section, see § 8(c) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998

(D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 8(c) of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 8(c) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 12-282. — Law 12-282, the “Metropolitan Police Department Civilianization Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-709. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-282 became effective on May 28, 1999.

Legislative history of Law 12-284. — Law 12-284, the “Metropolitan Police Department Civilianization Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-710, which was referred to the Judiciary Committee. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-284 became effective on June 12, 1999.

CASE NOTES

ANALYSIS

Construction and application.

Pretrial detention, generally.

Speedy trial.

Use of bail agency reports.

Construction and application.

Statute governing pretrial release in noncapital cases establishes a presumption in favor of unconditional release, and, where unconditional release is inappropriate, requires court to impose the least onerous set of restrictions that will adequately assure appearance and safety. D.C. Code 1981, § 23-1321. In re Rosen, 470 A.2d 292, 1983 D.C. App. LEXIS 528 (1983).

Pretrial detention, generally.

State's duty to control crime justifies in first instance pretrial detention. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Pretrial detention is permitted when there is probable cause to believe the suspect has committed a crime. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Pretrial detention may not violate a detainee's right to bail. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Courts will not engage in the balancing of pretrial detainee's liberty interests against government's interest in controlling crime and managing institution of pretrial detention in administratively feasible manner to determine whether the conditions of confinement violate detainee's constitutional rights if the conditions of pretrial confinement are otherwise violative of constitution. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Speedy trial.

Failure of Government to comply with rule requiring attorney for Government to make biweekly report to court listing each defendant held pending trial for period in excess of ten days and to state reasons why such defendants were still being held in custody cancelled any negative effect that defendants' failure to assert right to speedy trial formally until day of trial might have had on validity of the speedy trial claim. D.C. Code § 23-1303(h)(6); Fed. Rules Crim. Proc. rule 46(g), 18 U.S.C. *United States v. Cooper*, 504 F.2d 260, 1974 U.S. App. LEXIS 6885 (C.A.D.C. 1974).

Use of bail agency reports.

Confidentiality provisions of District of Columbia Code respecting pretrial services

agency do not prevent admission of information that is in public record, and Code was not violated by admission into evidence of phone numbers that defendant's accomplices gave to agency as their own and that were publicly available as part of district court's files. D.C. Code 1981, § 23-1303(d). *United States v. Cicero*, 22 F.3d 1156, 1994 U.S. App. LEXIS 10245 (C.A.D.C. 1994), writ of certiorari denied by 513 U.S. 905, 115 S. Ct. 270, 130 L. Ed. 2d 188, 1994 U.S. LEXIS 6810, 63 U.S.L.W. 3266 (1994).

Statements made to Pretrial Services Agency were not privileged and could be used by prosecutor to impeach defendant. D.C. Code 1981, § 23-1303(d). *Hall v. United States*, 540 A.2d 442, 1988 D.C. App. LEXIS 24 (1988).

Statute providing that "any information contained in the agency's files, presented in its report, or divulged during the course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding. . ." did not preclude the use of bail agency report as a basis for judicially knowing the district court's record of defendant's prior felony conviction. D.C. Code § 23-1303(d). *Haltiwanger v. United States*, 377 A.2d 1142, 1977 D.C. App. LEXIS 385 (1977).

"Confidentiality provision" of statute providing in part that "any information contained in the agency's files, presented in its report, or divulged during the course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding. . ." does not encompass facts otherwise of official record simply because of their inclusion in the report. D.C. Code § 23-1303(d). *Haltiwanger v. United States*, 377 A.2d 1142, 1977 D.C. App. LEXIS 385 (1977).

Defendant was properly impeached with information concerning prior conviction even though his admission of the prior conviction was made on a form prepared for bail agency. D.C. Code § 23-1303(d). *Anderson v. United States*, 352 A.2d 392, 1976 D.C. App. LEXIS 454 (1976).

Defendant was properly impeached by use of prior inconsistent statement given by him to representative of District of Columbia bail agency in the prosecution of offense for which the bail agency statement was given. D.C. Code § 23-1303(d). *Herbert v. United States*, 340 A.2d 802, 1975 D.C. App. LEXIS 416 (1975).

Stipulation as to impeachment testimony to be offered by employee of District of Columbia Bail Agency as to certain statements made to him by defendant after arrest was binding on defendant, notwithstanding contention that statute prohibited use of any information given Bail Agency for purposes of impeachment at trial. D.C. Code § 23-1303(d). *Cowan v. United*

States, 331 A.2d 323, 1975 D.C. App. LEXIS 307 (1975).

§ 23-1304. Executive committee; composition; appointment and qualifications of Director.

(a) The agency shall be advised by an executive committee of seven members, of which four members shall constitute a quorum. The Executive Committee shall be composed of the following persons or their designees: the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, the Chief Judge of the United States District Court for the District of Columbia, the Chief Judge of the District of the Columbia Court of Appeals, the Chief Judge of the Superior Court of the District of Columbia, the United States Attorney for the District of Columbia, the Director of the District of Columbia Public Defender Service, and the Director of the Court Services and Offender Supervision Agency for the District of Columbia.

(b) The Chief Judge of the United States Court of Appeals for the District of Columbia Circuit and the Chief Judge of the United States District Court for the District of Columbia, in consultation with the other members of the executive committee, shall appoint a Director of the agency who shall be a member of the bar of the District of Columbia.

(July 29, 1970, 84 Stat. 641, Pub. L. 91-358, title II, § 210(a); Feb. 28, 1987, D.C. Law 6-199, § 2, 34 DCR 519; Oct. 7, 1987, D.C. Law 7-31, § 9, 34 DCR 3789; Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a); Oct. 21, 1998, 112 Stat. 2426, Pub. L. 105-274, § 7(c)(2)(C).)

Prior Codifications. — 1981 Ed., § 23-1304.

1973 Ed., § 23-1304.

Legislative history of Law 6-199. — Law 6-199, the “District of Columbia Pretrial Services Agency Executive Committee Act of 1986,” was introduced in Council and assigned Bill No. 6-443, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on November 25, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act

No. 6-258 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-31. — Law 7-31, the “Boards and Commissions Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-139, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 14, 1987 and May 5, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-26 and transmitted to both Houses of Congress for its review.

§ 23-1305. Duties of director; compensation.

The Director of the agency shall be responsible for the supervision and execution of the duties of the agency. The Director shall be compensated as a member of the Senior Executive Service pursuant to subchapter VIII of chapter 53 of title 5, United States Code.

(July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a).)

Prior Codifications. — 1981 Ed., § 23-1305.

1973 Ed., § 23-1305.

References in text. — “Subchapter VIII of

chapter 53 of title 5, United States Code," referred to in this section, is codified at 5 U.S.C. § 5381 et seq.

§ 23-1306. Chief assistant and other agency personnel; compensation.

The Director shall employ a chief assistant who shall be compensated as a member of the Senior Executive Service pursuant to section 5382 of title 5, United States Code. The Director shall employ such agency personnel as may be necessary properly to conduct the business of the agency. All employees other than the chief assistant shall receive compensation that is comparable to levels of compensation established for Federal pretrial services agencies.

(July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a).)

Cross references. — Supersession of inconsistent laws, see § 1-611.16.

Section references. — This section is referred to in § 1-611.16.

Prior Codifications. — 1981 Ed., § 23-1306.

1973 Ed., § 23-1306.

§ 23-1307. Annual reports.

The Director shall each year submit to the executive committee and to the Director of the Court Services and Offender Supervision Agency for the District of Columbia a report as to the Pretrial Services Agency's administration of its responsibilities for the previous fiscal year. The Director shall include in the report a statement of financial condition, revenues, and expenses for the past fiscal year.

(July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); Apr. 30, 1988, D.C. Law 7-104, § 7(g), 35 DCR 147; Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a); Oct. 21, 1998, 112 Stat. 2427 Pub. L. 105-274, § 7(c)(2)(D).)

Prior Codifications. — 1981 Ed., § 23-1307.

1973 Ed., § 23-1307.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

§ 23-1308. Appropriation; budget.

There are authorized to be appropriated through the State Justice Institute in each fiscal year such sums as may be necessary to carry out the provisions of this subchapter. Funds appropriated by Congress for the District of Columbia Pretrial Services Agency shall be received by the Director of the Court Services and Offender Supervision Agency for the District of Columbia, and shall be disbursed by that Director to and on behalf of the District of Columbia Pretrial Services Agency. The District of Columbia Pretrial Services Agency shall submit to the Director of the Court Services and Offender

Supervision Agency for the District of Columbia at the time and in the form prescribed by that Director, reports of its activities and financial position and its proposed budget.

(July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a); Oct. 21, 1998, 112 Stat. 2427, Pub. L. 105-274, § 7(c)(2)(E).)

Prior Codifications. — 1981 Ed., § 23-1308. 1973 Ed., § 23-1308.

§ 23-1309. References to “Bail Agency” deemed to be to “Pretrial Services Agency.”

Any reference in any law, rule, regulation, document, or record of the United States or the District of Columbia to the District of Columbia Bail Agency shall be deemed to be a reference to the District of Columbia Pretrial Services Agency.

(Sept. 27, 1978, 92 Stat. 753, Pub. L. 95-388, § 3.)

Prior Codifications. — 1981 Ed., § 23-1309. 1973 Ed., § 23-1309.

CASE NOTES

ANALYSIS

Confidentiality.

Construction and application.

(C.A.D.C. 1994), writ of certiorari denied by 513 U.S. 905, 115 S. Ct. 270, 130 L. Ed. 2d 188, 1994 U.S. LEXIS 6810, 63 U.S.L.W. 3266 (1994).

Confidentiality.

Confidentiality provisions of District of Columbia Code respecting pretrial services agency do not prevent admission of information that is in public record, and Code was not violated by admission into evidence of phone numbers that defendant's accomplices gave to agency as their own and that were publicly available as part of district court's files. D.C. Code 1981, § 23-1303(d). *United States v. Cicero*, 22 F.3d 1156, 1994 U.S. App. LEXIS 10245

Construction and application.

Operations of District of Columbia pretrial service agency are governed by the confidentiality restrictions of the District of Columbia Code and not by the provisions of the Pretrial Services Act of 1982. D.C. Code 1981, § 23-1301 et seq.; 18 U.S.C. §§ 3152-3156. *United States v. Cicero*, 22 F.3d 1156, 1994 U.S. App. LEXIS 10245 (C.A.D.C. 1994), writ of certiorari denied by 513 U.S. 905, 115 S. Ct. 270, 130 L. Ed. 2d 188, 1994 U.S. LEXIS 6810, 63 U.S.L.W. 3266 (1994).

Subchapter II. Release and Pretrial Detention.

§ 23-1321. Release prior to trial.

(a) Upon the appearance before a judicial officer of a person charged with an offense, other than murder in the first degree, murder in the second degree, or assault with intent to kill while armed, which shall be treated in accordance with the provisions of § 23-1325, the judicial officer shall issue an order that, pending trial, the person be:

(1) Released on personal recognizance or upon execution of an unsecured appearance bond under subsection (b) of this section;

(2) Released on a condition or combination of conditions under subsection (c) of this section;

(3) Temporarily detained to permit revocation of conditional release under § 23-1322; or

(4) Detained under § 23-1322(b).

(b) The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a local, state, or federal crime during the period of release, unless the judicial officer determines that the release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c)(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, the judicial officer shall order the pretrial release of the person subject to the:

(A) Condition that the person not commit a local, state, or federal crime during the period of release; and

(B) Least restrictive further condition, or combination of conditions, that the judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition or combination of conditions that the person during the period of release shall:

(i) Remain in the custody of a designated person or organization that agrees to assume supervision and to report any violation of a condition of release to the court, if the designated person or organization is able to reasonably assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) Maintain employment, or, if unemployed, actively seek employment;

(iii) Maintain or commence an educational program;

(iv) Abide by specified restrictions on personal associations, place of abode, or travel;

(v) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) Report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) Comply with a specified curfew;

(viii) Refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) Refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner; the terms "narcotic drug" and "controlled substance" shall have the same meaning as in section 102 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D.C. Law 4-29; D.C. Official Code § 48-901.02);

(x) Undergo medical, psychological, or psychiatric treatment, includ-

ing treatment for drug or alcohol dependency, if available, and remain in a specified institution if required for that purpose;

(xi) Return to custody for specified hours following release for employment, schooling, or other limited purposes, except that no person may be released directly from the District of Columbia Jail or the Correctional Treatment Facility for these purposes;

(xii) Execute an agreement to forfeit upon failing to appear as required, the designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court the indicia of ownership of the property, or a percentage of the money as the judicial officer may specify;

(xiii) Execute a bail bond with solvent sureties in whatever amount is reasonably necessary to assure the appearance of the person as required; or

(xiv) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(2) In considering the conditions of release described in paragraph (1)(B)(xii) or (xiii) of this subsection, the judicial officer may upon his own motion, or shall upon the motion of the government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation or the use as collateral of property that, because of its source, will not reasonably assure the appearance of the person as required.

(3) A judicial officer may not impose a financial condition under paragraph (1)(B)(xii) or (xiii) of this subsection to assure the safety of any other person or the community, but may impose such a financial condition to reasonably assure the defendant's presence at all court proceedings that does not result in the preventive detention of the person, except as provided in § 23-1322(b).

(4) A person for whom conditions of release are imposed and who, after 24 hours from the time of the release hearing, continues to be detained as a result of inability to meet the conditions of release, shall upon application be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, on another condition or conditions, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition that requires that the person return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is released on another condition or conditions, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed the conditions of release is not available, any other judicial officer may review the conditions.

(5) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); Sept. 17, 1982, D.C. Law 4-152, §§ 2, 5, 29 DCR 3479; July 3, 1992, D.C. Law 9-125, § 2, 39

DCR 2134; Aug. 20, 1994, D.C. Law 10-151, § 601, 41 DCR 2608; June 12, 2001, D.C. Law 13-310, § 2(a), 48 DCR 1648; June 5, 2003, D.C. Law 14-307, § 2102, 49 DCR 11664.)

Cross references. — Bail and collateral security, see § 16-704.

Section references. — This section is referred to in §§ 23-1322 to 23-1326, 23-1328 and 23-1329.

Prior Codifications. — 1981 Ed., § 23-1321.

Effect of amendments. — D.C. Law 13-310, in subsec. (a), inserted “, murder in the second degree”.

D.C. Law 14-307 rewrote sub-subpar. (1)(B)(xi) of subsec. (c) which had read as follows: “(xi) Return to custody for specified hours following release for employment, schooling, or other limited purposes;”

Emergency legislation. — For temporary amendment of section, see § 601 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary (90 day) amendment of section, see § 2102 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2102 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 2102 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 4-152. — Law 4-152, the “District of Columbia Bail Amendment Act of 1982,” was introduced in Council and assigned Bill No. 4-127, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 6, 1982 and July 20, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-223 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-125. — Law 9-125, the “Bail Reform Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-360, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 20, 1992, it was assigned Act No. 9-170 and transmitted to both Houses of Congress for its review. D.C. Law 9-125 became effective on July 3, 1992.

Legislative history of Law 10-151. — Law 10-151, the “Omnibus Criminal Justice Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Legislative history of Law 13-310. — Law 13-310, the “Bail Reform Act of 2000,” was introduced in Council and assigned Bill No. 13-290, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-567 and transmitted to both Houses of Congress for its review. D.C. Law 13-310 became effective on June 12, 2001.

Legislative history of Law 14-307. — Law 14-307, the “Fiscal Year 2003 Budget Support Amendment Act of 2002,” was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

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Upon challenge by a defendant who is subjected to pretrial detention on basis of risk of flight, trial court, in applying clear and convincing evidence standard, must carefully consider defendant's rebuttal evidence that he is not a flight risk and that there are in fact conditions of release which could insure his future appearance in court. D.C. Code 1981, § 23-1325(a). *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Trial court on remand of case in which it imposed pretrial detention based on risk of flight was required to apply clear and convincing evidence standard, and to carefully consider the defendant's rebuttal evidence that he was not a flight risk. D.C. Code 1981, § 23-1325(a). *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Superior Court has the authority to release defendant, provided that he is able to meet the difficult task of showing that he is entitled to release. *United States v. Flynn*, 122 WLR 1021 (Super. Ct. 1994).

Conclusiveness of adjudication.

All pretrial detention orders in same prosecution are part of same case for preclusion purposes, without regard to how many appellate court docket numbers may be generated by successive appeals of renewed or amended detention orders. *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Construction and application.

Pretrial detention may not violate a detainee's right to bail. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

State's duty to control crime justifies in first instance pretrial detention. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Applications for release of prisoners convicted in the District of Columbia under federal criminal statutes having nationwide application must be considered under the "Bail Reform Act of 1966" and not under the "Court Reform and Criminal Procedure Act". 18 U.S.C. § 3146

et seq.; D.C. Code § 23-1321 et seq. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

Superior Court magistrate judges fell within definition of "judicial officer" as that term was used in statute permitting "judicial officers" to set conditions of pretrial release; another statute expressly authorized magistrate judges to determine conditions of release. *Vest v. United States*, 834 A.2d 908, 2003 D.C. App. LEXIS 633 (2003).

Detention prior to trial or without trial is carefully limited exception to general principle that liberty of defendants, pending trial, is the norm. *Best v. United States*, 651 A.2d 790, 1994 D.C. App. LEXIS 246 (1994).

Pretrial detention orders are "regulatory," not punitive, measures, which are open to periodic review and modification and, thus, such orders are preliminary and ancillary to prosecution, rather than being separate cases in their own right. D.C. Code 1981, §§ 23-1324, 23-1325(a, d). *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Pretrial detention statute, even for those suspected of armed murder, may not be used either as punitive measure or to incarcerate in lieu of valid conviction based on verdict and sentence. D.C. Code 1981 § 23-1325(a). *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

"Charged," in statute which provides for the release of a person "charged" with an offense upon his own recognizance or posting of a bond, means a formal accusation by the Government that a person has committed a crime. D.C. Code 1981, § 23-1321(a). *Speight v. United States*, 569 A.2d 124, 1989 D.C. App. LEXIS 245 (1989).

Liberty of a defendant who has been or is entitled to release may nevertheless be restricted after an indictment if, following a de novo hearing, the court finds that the defendant would either fail to appear at future court proceedings or could pose a danger to the community if released. D.C. Code 1981, §§ 23-102, 23-1321, 23-1325(a). *Price v. United States*, 476 A.2d 644, 1984 D.C. App. LEXIS 386 (1984).

Statute governing pretrial release in noncapital cases establishes a presumption in favor of unconditional release, and, where unconditional release is inappropriate, requires court to impose the least onerous set of restrictions that will adequately assure appearance and safety. D.C. Code 1981, § 23-1321. In re *Rosen*, 470 A.2d 292, 1983 D.C. App. LEXIS 528 (1983).

It will be practice of Superior Court, in the interest of the efficient and fair administration of justice, with due regard to the liberty interest of those persons accused of crimes, to give priority on the calendar to defendants who are imprisoned because of their inability to make

bond. *United States v. Morgan*, 116 WLR 641 (Super. Ct. 1988).

Contempt for violating conditions of release.

Even assuming injunction issued in underlying civil stalking case was void, defendant could be charged with criminal contempt for violating release order that directed her from refraining from illegal drug use; court was required to have authority to issue the order to maintain orderly process. *In re Peak*, 759 A.2d 612, 2000 D.C. App. LEXIS 230 (2000).

Private counsel representing plaintiff in underlying civil stalking action should not have been appointed prosecutor in criminal contempt proceedings for defendant's alleged violation of release order that directed her to refrain from illegal drug use, which the court issued in proceedings to determine whether defendant violated a permanent injunction. *In re Peak*, 759 A.2d 612, 2000 D.C. App. LEXIS 230 (2000).

Defendant's alleged heroin addiction was not a defense to criminal contempt for violating condition of pretrial release not to use illegal drugs. D.C. Code 1981, §§ 23-1321(c)(1)(B), 23-1329. *Grant v. United States*, 734 A.2d 174, 1999 D.C. App. LEXIS 160 (1999).

Defendant did not receive sufficient notice that she was required to refrain from having indirect contact with individual through his attorney as condition of her pretrial release as required for criminal contempt conviction for failure to obey judicial order, as condition of pretrial release, to stay away from individuals involved in her upcoming prosecution for malicious destruction of property; sole written statement of pretrial release conditions did not command defendant to stay away from third parties associated with individuals, and trial judge's oral instruction as to third parties was general, such that defendant could not reasonably infer from those words that she was not to have contact with individual's attorney. D.C. Code 1981, §§ 23-1321(a)(2), 23-1322(f)(1); Criminal Rule 42(b). *Smith v. United States*, 677 A.2d 1022, 1996 D.C. App. LEXIS 100 (1996).

Contempt statute for violation of condition of release operates independently of and in addition to statute eliminating limitation on length of sentence for criminal contempt, thus the sentencing limit of six months' imprisonment and \$1,000 fine does not apply to convictions for violations of pretrial release order constituting contempt. D.C. Code 1981, §§ 11-944, 16-705(b), 23-1329(c); U.S. Const. Amends. 5, 6, 14. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

It was not inappropriate for trial judge to consider danger presented to complainant by defendant's disobedience of his pretrial release

order when sentencing defendant for contempt. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

In order to convict an individual for criminal contempt, it is necessary to find beyond a reasonable doubt that the individual committed a volitional act that constitutes contempt; accordingly, in the instant case, a conviction of contempt could not be predicated solely on defendant's being arrested on probable cause, since the volitional act would be commission of a crime, not the matter of being arrested. D.C. Code §§ 11-944, 23-1321. *Parker v. United States*, 373 A.2d 906, 1977 D.C. App. LEXIS 322 (1977).

Criminal offenses committed while on release.

In resolving equal protection challenge to statute requiring that any person convicted of offense committed while on pretrial release is subject to certain additional penalties, rational basis test, rather than more rigorous strict scrutiny test, was applicable. D.C. Code § 23-1328; U.S. Const. Amend. 14. *Daniel v. United States*, 408 A.2d 1231, 1979 D.C. App. LEXIS 504 (1979).

Statute providing that any person convicted of offense committed while on pretrial release is subject to additional penalties was reasonable response to a legitimate governmental activity, i.e., prevention of crime, and thus did not deny equal protection. D.C. Code § 23-1328; U.S. Const. Amend. 14. *Daniel v. United States*, 408 A.2d 1231, 1979 D.C. App. LEXIS 504 (1979).

Dangerousness to community.

— Homicide, dangerousness to community.

Statute, which provides that person who is charged with first-degree murder may be ordered detained if conditions of release will not reasonably assure that person will not flee or pose danger to any other person or community, did not violate defendants' rights to confrontation and compulsory process. D.C. Code 1981, §§ 23-1321(b), 23-1325(a); U.S.C. Const. Amends. 4, 5. *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Since pretrial detention of person charged with first-degree murder is not to punish a defendant but to prevent flight and protect the community, and since pretrial detention in these cases is reasonably related to legitimate governmental objective, detention pursuant to statute of persons charged with first-degree murder is regulatory and does not constitute punishment. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of

certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Since determination that person charged with first-degree murder should be detained because conditions of release will not reasonably assure that person will not flee or pose danger to community could result in significant pretrial restraint of liberty, some type of hearing is required to insure fair and reliable determination but there is no constitutional right to formal evidentiary hearing and hearing contemplated is informal one in which presiding judge entertains representations from counsel and bail agency. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

— In general.

Proceedings at pretrial detention hearing, at which Government argued and judge concluded that defendant should be detained without bond pending trial because of risk of danger he presented to community, were sufficient to support order to detain defendant, who was found to have committed murder in front of witnesses "because of a slight, trivial disagreement". D.C. Code 1981, §§ 23-1321, 23-1324(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

With respect to pretrial detention, defendant received adequate notice of specific instances of his past and present conduct upon which the Government relied to show his dangerousness to the community. D.C. Code §§ 23-1321(b), 23-1322(b)(2), (b)(2)(B)(i). *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

Pretrial detention statute was not unconstitutionally vague as to defendant, on theory that Congress left meaning of "past conduct" supporting finding of dangerousness to discretion of judicial officer, where crimes with which defendant was charged and crimes which he admitted he had committed in four months preceding his arrest, rape, sodomy, two burglaries, and 17 robberies, as well as adjudication of his juvenile social file, were all prohibited conduct under concededly valid criminal laws. D.C. Code §§ 23-1321(b), 23-1322(b)(2)(B), 23-1331(3, 4). *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

In view of defendant's past record of convictions, character, and fact of conviction for inducing a female to engage in prostitution, compelling a female by threats and duress to live a life of prostitution against her will, assault with a dangerous weapon, and mayhem and malicious disfigurement, order setting postconviction bail was unsupported respecting necessary finding as to nondangerousness, and defendant should have been ordered detained pending appeal and should have remained in custody, not because he lacked means to make bail, but for reason that his release would present danger to community. D.C. Code §§ 23-1321(d, e), 23-1322(b)(3), 23-1323, 23-1325(b, c). *Villines v. United States*, 312 A.2d 304, 1973 D.C. App. LEXIS 417 (1973).

Dismissal.

Even if motions judge abused her discretion in granting prosecution one-day continuance and permitting prosecutor to seek immediate superseding indictment after expiration of statutory time period for filing indictment, proper remedy was to reconsider defendant's detention without bond, not terminate prosecution. D.C. Code 1981, § 23-1322(h). *Mack v. United States*, 637 A.2d 430, 1994 D.C. App. LEXIS 13 (1994).

Drug testing.

Trial court had discretionary authority, implied by authority expressly granted under Bail Reform Act, to condition defendant's pretrial release on submission to drug testing. D.C. Code 1981, § 23-1321. *Oliver v. United States*, 682 A.2d 186, 1996 D.C. App. LEXIS 176 (1996).

Pretrial release condition requiring defendant to submit to weekly drug test by giving urine sample was reasonable under circumstances, and thus did not violate Fourth Amendment, given that government had compelling interest to protect public from criminal activity and to assure defendant's appearance in court while allowing defendant to remain free from detention pending trial, that means selected by court to protect applicable governmental interests could reasonably be viewed as least restrictive available, that very crimes with which defendant was charged included unlawful possession of drugs, that defendant had three prior drug convictions, that defendant admitted to court that he had drug problem, and that defense counsel asked court to release defendant to enable him to work on his drug problem. U.S.C. Const. Amend. 4; D.C. Code 1981, § 23-1321. *Oliver v. United States*, 682 A.2d 186, 1996 D.C. App. LEXIS 176 (1996).

Financial conditions on release.

— Amount, financial conditions on release.

Trial court, after reasonably rejecting non-

monetary release conditions, was not required to impose money bail which would guarantee defendant's pretrial liberty and, since amount was reasonably related to risk of flight, it was not excessive under Eighth Amendment, even though defendant was unable to post it, and defendant might be lawfully detained for failure to post the bail. D.C. Code §§ 23-1321 to 23-1323, 23-1321(a), 23-1324(b); U.S. Const. Amend. 8. *Ireland v. United States*, 406 A.2d 1259, 1979 D.C. App. LEXIS 442 (1979).

Setting of unattainable money bond is not permissible means to assure against accused's dangerousness including threatening of witnesses. D.C. Code § 23-1321(a). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Only basis for refusal to reduce a postconviction surety bond must be found in a necessity to ensure against flight. D.C. Code § 23-1321(a). *Villines v. United States*, 312 A.2d 304, 1973 D.C. App. LEXIS 417 (1973).

— Community safety, financial conditions on release.

Money bond set under pretrial release statute could not be justified on reasons relating to dangerousness to other persons or the community. D.C. Code § 23-1321. *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Monetary conditions of pretrial release may not be used to assure against dangerousness, but nonmonetary conditions may be used for that purpose. D.C. Code §§ 17-306, 23-1321, 23-1321(a), 23-1322(a)(3). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

— In general.

Money bond may be used only to prevent flight of accused or to assure his appearance for trial. D.C. Code § 23-1321(a). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Under Bail Reform Act of 1966, and under District of Columbia local bail provisions, a money bond may not be used to assure detention. D.C. Code §§ 23-1321(d, e), 23-1322(b)(3), 23-1323, 23-1325(b, c). *Villines v. United States*, 312 A.2d 304, 1973 D.C. App. LEXIS 417 (1973).

Findings.

Court order denying bail or other conditions of release must do more than repeat statutory language and hypothetical risks; it must clearly state reasons and rationale for holding in jail—based on regulatory, not punitive concerns—a person who is innocent until proved guilty. *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Where, in the course of 24-hour review procedure invoked by accused, superior court judge

failed to articulate reasons for rejecting accused's request for less onerous release conditions, remand was necessary. D.C. Code 1981, § 23-1321(d, e). *Clotterbuck v. United States*, 459 A.2d 134, 1983 D.C. App. LEXIS 345 (1983).

Where trial court set secured money bonds of \$10,000 each for two defendants charged with murder during perpetration of robbery, but record did not contain full information concerning nature and circumstances of offense and why other conditions of release would not be suitable, proceedings on appeal after defendants' motions for review of bond had been overruled would be remanded for supplementation of record by complete statement by trial court on those matters or, if trial court deemed it appropriate, entry of new orders respecting pretrial bail. D.C. Code §§ 22-2401, 23-1321, 23-1324; 18 U.S.C. §§ 3146 et seq., 3500. *Bouknight v. United States*, 305 A.2d 524, 1973 D.C. App. LEXIS 291 (1973).

Good cause for release.

Where limited custodial release offered only means by which defendant could present viable defense to second-degree murder charge, good faith representation by defendant that there were witnesses who could exculpate him but that, although defendant knew such witnesses by sight, he did not know them by name was sufficient showing of "good cause" to warrant limited release of defendant in custody of United States marshal in order to obtain witnesses. D.C. Code § 23-1321(h)(2). *United States v. Reese*, 463 F.2d 830, 1972 U.S. App. LEXIS 9196 (C.A.D.C. 1972).

When denial of custodial release in order to obtain witnesses may deprive defendant of his only opportunity to establish his claim of defense, bona fide representation as to the character of the defense sought to be established should be accommodated unless outweighed by compelling reasons for denying release. D.C. Code § 23-1321(h)(2). *United States v. Reese*, 463 F.2d 830, 1972 U.S. App. LEXIS 9196 (C.A.D.C. 1972).

It is for the district court, with the aid of the parties, to work out questions of judgment involved in balancing opportunity of an incarcerated defendant to be released in custody of United States marshal in order to search for witnesses against the need to take into account the safety of his custodians and to guard against the risk of flight. D.C. Code § 23-1321(h)(2). *United States v. Reese*, 463 F.2d 830, 1972 U.S. App. LEXIS 9196 (C.A.D.C. 1972).

The degree of cooperation with respect to discovery between the government and a defendant who seeks custodial release in order to seek witnesses is to be taken into consideration as to the type and length of custodial release

appropriate. D.C. Code § 23-1321(h)(2). *United States v. Reese*, 463 F.2d 830, 1972 U.S. App. LEXIS 9196 (C.A.D.C. 1972).

Grounds for grant or denial of release, generally.

Where information showed that defendant was charged with first-degree murder of her daughter and did not deny committing offense, and where according to entry in her diary her daughter's presence was only thing that kept her from leaving District of Columbia, and where even if defendant, who alleged insanity defense, was not guilty by reason of insanity she faced possible indefinite hospitalization, there was sufficient "reason to believe" that conditions of release would not reasonably assure that defendant would not flee or pose danger to community and thus there was sufficient support for order detaining defendant without bond. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Proceedings at pretrial detention hearing, including defendant's lack of employment, brutality of shooting and pending charge for possession of a dangerous weapon, supported judge's finding that no conditions for release could guarantee against defendant's flight or danger that he presented to community and thus supported defendant's pretrial detention without bond. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Criminal rule and statute pertaining to release of person detained on bail prior to trial require at a minimum that defendant allege facts in support of motion for release which, if proven, would permit trial court to conclude that good cause exists for granting defendant temporary leave from pretrial incarceration. D.C. Code § 23-1321(h)(2); D.C. Code SCR, Criminal Rule 47. *Perry v. United States*, 364 A.2d 617, 1976 D.C. App. LEXIS 365 (1976).

Although accused charged with grand larceny and released on personal recognizance bond allegedly threatened a witness and was arrested on charge of obstructing justice, setting of surety bond of \$5,000 was not justified on theory that, in view of the serious nature of the pending charges, amounting to an assault on integrity of judicial system, and the unemployment of accused, accused was unreliable and unlikely to abide by nonfinancial conditions of release; thus case must be remanded for proceedings on issue of pretrial detention or appropriate conditions of release. D.C. Code

§§ 17-306, 23-1321, 23-1322, 23-1322(a), (a)(3), (d). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

In view of defendant's absence of ties to the community, unknown record outside of District of Columbia, and unwillingness to reveal his true identity, requirements were reasonably calculated and least restrictive means available to secure the appearance of the defendant at future scheduled court proceedings. *United States v. Morgan*, 116 WLR 641 (Super. Ct. 1988).

Hearing required.

Because charged person's liberty interest is at stake, due process requires substantive standards and procedural safeguards before pretrial detention. U.S. Const. Amend. 14. *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Notwithstanding return of indictment by grand jury, accused has right under Bail Reform Act to present evidence at pretrial detention hearing regarding nature and circumstances of charged offense and weight of evidence against accused, for purpose of providing information that trial court must consider in making individualized determination of whether accused should be detained pretrial. D.C. Code 1981, § 23-1322(b, d, e). *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Order of pretrial detention was not supported by required statutory proceedings, as trial court did not consider accused's proffered evidence concerning nature and circumstances of charged offense and weight of evidence against accused, and trial court ordered detention based solely on fact of indictment and accused's prior criminal history. D.C. Code 1981, § 23-1322(b, d, e). *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

It is within trial court's sound discretion to determine appropriate scope and extent of evidentiary presentations and cross-examination at pretrial detention hearing, in light of proffer made and trial court's assessment of evidence developed at hearing. D.C. Code 1981, § 23-1322. *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Considerations of judicial efficiency caution against permitting pretrial detention hearing to turn into trial of indicted offense or means of discovery. D.C. Code 1981, § 23-1322. *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Probable cause.

Without probable cause, person may not even be bound over for trial, much less detained pretrial before his or her guilt is proven at trial. U.S. Const. Amend. 4. *Tyler v. United States*,

705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Review.

Error was not harmless in trial court's appointing private counsel that represented plaintiff in underlying civil stalking action to prosecute criminal contempt charge for defendant's alleged violation of release order that directed her to refrain from illegal drug use, which the court issued in proceedings to determine whether defendant violated a permanent injunction. *In re Peak*, 759 A.2d 612, 2000 D.C. App. LEXIS 230 (2000).

Court of Appeals would consider, on rehearing en banc, whether defendant had right at pretrial detention hearing to present evidence regarding nature and circumstances of charged offense and weight of evidence against defendant, though issue was moot as to defendant because he had pled guilty; defendant presented issue of importance that was likely to recur yet evade review, and issue was fully briefed by interested parties. D.C. Code 1981, § 23-1322(b, d, e); Court of Appeals Rule 40(e)(2). *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Court of Appeals does not apply strict rule of mootness to dismiss case because it no longer affects particular appellant, if it presents matter of importance that is likely to recur yet evade review with respect to others similarly situated. *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Although presentment judge's dilatory actions in setting bond for defendant may have had potential for impairing defendant's right to bail, defendant's appeal from conviction for taking indecent liberties with minor child and enticing minor child did not present appropriate case for resolution of such problem inasmuch as actions of presentment judge and pretrial incarceration complained of were in connection with wholly unrelated case. D.C. Code § 23-1321, U.S. Const. Amend. 8. *Banton v. United States*, 411 A.2d 975, 1980 D.C. App. LEXIS 220 (1980).

Third party custody.

Particularly when requested by accused, some form of third-party custody should be explored and rationally imposed or rejected before a monetary bond is selected. D.C. Code §§ 23-1321, 23-1322, 23-1322(a), (a)(3)(d). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Setting of third-party custody and intensity thereof as condition of pretrial release need not immediately result in release and custodian obtained, as well as degree of supervision undertaken, must be acceptable to court before release is permitted. D.C. Code §§ 17-306, 23-1321, 23-1321(a), 23-1322(a)(3). *Jones v. United*

States, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Third-party custody is the first and preferred condition of the trial release to be used in conjunction with or in lieu of personal recognition. D.C. Code §§ 17-306, 23-1321, 23-1321(a), 23-1322(a)(3). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Fact that acceptable third-party custodian is not available is no reason to reject pretrial release or to resort to surety bond. D.C. Code §§ 17-306, 23-1321, 23-1321(a), 23-1322(a)(3). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Time limitations on pretrial detention.

There are no time limitations on period of pretrial detention of person charged with assault with intent to kill while armed who has been found to be at risk of flight or to be danger to community; statute providing for such pretrial detention plainly and unambiguously did not include time limitations. D.C. Code 1981, § 23-1325(a). *McPherson v. United States*, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

Statute setting forth maximum periods during which defendants can be incarcerated pending trial is provided by statute, which abrogates prior cases finding an inherent authority in court to order pretrial detention. D.C. Code 1981, § 23-1322. *Best v. United States*, 651 A.2d 790, 1994 D.C. App. LEXIS 246 (1994).

Statutory requirement that trial begin within 100 days of defendant's initial detention does not protect defendant's right to speedy trial pursuant to Sixth Amendment; rather, it vindicates defendant's Eighth Amendment right to bail. U.S. Const. Amends. 6, 8; D.C. Code 1981, § 23-1322(h). *Mack v. United States*, 637 A.2d 430, 1994 D.C. App. LEXIS 13 (1994).

Once a defendant has been ordered detained, the clock starts running and with certain exceptions he must be either tried or granted conditions of release within a maximum of 90 days, and the later addition of new charges, even though they may be very serious, cannot toll the maximum detention period or start it running again. D.C. Code 1981, §§ 23-1322, 23-1322(b-d), (d)(2). *Hazel v. United States*, 483 A.2d 1157, 1984 D.C. App. LEXIS 553 (1984).

The trial court had no authority, other than that provided by statute, to order pretrial detention of defendant and thus, when 90 days expired and defendant's trial had not begun following original order of detention, defendant had right to have conditions of release set like any other defendant awaiting trial notwithstanding subsequent filing of new charges of bribery and obstruction of justice. D.C. Code 1981, §§ 23-1322, 23-1322(b-d), (d)(2). *Hazel v.*

United States, 483 A.2d 1157, 1984 D.C. App. LEXIS 553 (1984).

Validity.

In appropriate cases, pretrial detention is constitutionally permissible regulatory vehicle to provide temporary period during which person charged with serious crime may be detained, even though that person's guilt has not been established beyond a reasonable doubt. *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Statute providing that person charged with assault with intent to kill while armed may be held in pretrial detention if found to pose a danger or if risk of flight is presented was not facially invalid under the equal protection clause; government had a compelling interest for detaining those accused of drive-by shootings who pose a danger to community or a risk of flight, until trial, so long as detention continued to be of regulatory rather than punitive nature. U.S. Const.Amend. 5; D.C. Code 1981, § 23-1325(a). *McPherson v. United States*, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

Statute providing that person charged with assault with intent to kill while armed may be held in pretrial detention if found to pose danger or risk of flight was not facially invalid under the due process clause. U.S.C. Const.Amend. 5; D.C. Code 1981, § 23-1325(a). *McPherson v. United States*, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

Statute which provides that person charged with first-degree murder may be released unless judicial officer has reason to believe that no conditions of release will reasonably assure that person will not flee or pose danger to community, which incorporates standards to determine whether to release defendant prior to trial, and which applies only to constitutionally regulable conduct, is not void for vagueness on theory that it provides no standard for judge to determine whether person would "pose a danger to . . . the community" nor is it overbroad. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

§ 23-1322. Detention prior to trial.

(a) The judicial officer shall order the detention of a person charged with an offense for a period of not more than 5 days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the government to notify the appropriate court, probation or parole official, or local or state law enforcement official, if the judicial officer determines that the person charged with an offense:

(1) Was at the time the offense was committed, on:

(A) Release pending trial for a felony or misdemeanor under local, state, or federal law;

(B) Release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under local, state, or federal law; or

(C) Probation, parole or supervised release for an offense under local, state, or federal law; and

(2) May flee or pose a danger to any other person or the community or, when a hearing under § 23-1329(b) is requested, is likely to violate a condition of release. If the official fails or declines to take the person into custody during the 5-day period described in this subsection, the person shall be treated in accordance with other provisions of law governing release pending trial.

(b)(1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in § 23-1321(c) will reasonably assure the appearance of the person as required and the safety of any other person and the community, upon oral motion of the attorney for the government, in a case that involves:

(A) A crime of violence, or a dangerous crime, as these terms are defined in § 23-1331;

(B) An offense under section 502 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-722);

(C) A serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(D) A serious risk that the person will flee.

(2) If, after a hearing pursuant to the provision of subsection (d) of this section, the judicial officer finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required, and the safety of any other person and the community, the judicial officer shall order that the person be detained before trial.

(c) There shall be a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community if the judicial officer finds by probable cause that the person:

(1) Committed a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, while armed with or having readily available a pistol, firearm, imitation firearm, or other deadly or dangerous weapon;

(2) Has threatened, injured, intimidated, or attempted to threaten, injure, or intimidate a law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal investigation or judicial proceeding;

(3) Committed a dangerous crime or a crime of violence, as these terms are defined in § 23-1331, and has previously been convicted of a dangerous crime or a crime of violence which was committed while on release pending trial for a local, state, or federal offense;

(4) Committed a dangerous crime or a crime of violence while on release pending trial for a local, state, or federal offense;

(5) Committed 2 or more dangerous crimes or crimes of violence in separate incidents that are joined in the case before the judicial officer;

(6) Committed a robbery in which the victim sustained a physical injury;

(7) Violated § 22-4504(a) (carrying a pistol without a license), § 22-4504(a-1) (carrying a rifle or shotgun), § 22-4504(b) (possession of a firearm during the commission of a crime of violence or dangerous crime), § 22-4503 (unlawful possession of a firearm) or [§ 22-2511] (presence in a motor vehicle containing a firearm); or

(8) Violated Title VIII of the Firearms Control Regulations Act of 1975, passed on 3rd reading on July 31, 2009 (Enrolled version of Bill 18-151) [§ 7-2508.01 et seq.], while on probation, parole, or supervised release for committing a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, and while armed with or having readily available a firearm, imitation firearm, or other deadly or dangerous weapon as described in § 22-4502(a).

(d)(1) The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the

government, seeks a continuance. Except for good cause, a continuance on motion of the person shall not exceed 5 days, and a continuance on motion of the attorney for the government shall not exceed 3 days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the government or *sua sponte*, may order that, while in custody, a person who appears to be an addict receive a medical examination to determine whether the person is an addict, as defined in § 23-1331.

(2) At the hearing, the person has the right to be represented by counsel and, if financially unable to obtain adequate representation, to have counsel appointed.

(3) The person shall be afforded an opportunity to testify. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings under §§ 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purpose of impeachment in any subsequent proceedings.

(4) The person shall be afforded an opportunity to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.

(5) The person shall be detained pending completion of the hearing.

(6) The hearing may be reopened at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of the person as required or the safety of any other person or the community.

(7) When a person has been released pursuant to this section and it subsequently appears that the person may be subject to pretrial detention, the attorney for the government may initiate a pretrial detention hearing by *ex parte* written motion. Upon such motion, the judicial officer may issue a warrant for the arrest of the person and if the person is outside the District of Columbia, the person shall be brought before a judicial officer in the district where the person is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

(e) The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account information available concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or dangerous crime as these terms are defined in § 23-1331, or involves obstruction of justice as defined in § 22-722;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person, including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, on supervised release, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under local, state, or federal law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(f) In a release order issued under § 23-1321(b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of:

(A) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) The consequences of violating a condition of release, including immediate arrest or issuance of a warrant for the person's arrest; and

(C) The provisions of § 22-722, relating to threats, force, or intimidation of witnesses, jurors, and officers of the court, obstruction of criminal investigations and retaliating against a witness, victim, or an informant.

(g) In a detention order issued under subsection (b) of this section, the judicial officer shall:

(1) Include written findings of fact and a written statement of the reasons for the detention;

(2) Direct that the person be committed to the custody of the Attorney General of the United States for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) Direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) Direct that, on order of a judicial officer or on request of an attorney for the government, the person in charge of the corrections facility in which the person is confined deliver the person to the United States Marshal or other appropriate person for the purpose of an appearance in connection with a court proceeding.

(h)(1) The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days. However, the time within which the person shall be indicted or shall have the trial of the case commence may be extended for one or more additional periods not to exceed 20 days each on the basis of a petition submitted by the attorney for the government and approved by the judicial officer. The additional period or periods of detention may be granted only on the basis of good cause shown, including due diligence and materiality, and shall be granted only for the additional time required to prepare for the expedited indictment and trial of the person. Good cause may include, but is not limited to, the unavailability of an essential witness, the necessity for forensic analysis of

evidence, the ability to conduct a joint trial with a co-defendant or co-defendants, severance of co-defendants which permits only one trial to commence within the time period, complex or major investigations, complex or difficult legal issues, scheduling conflicts which arise shortly before the scheduled trial date, the inability to proceed to trial because of action taken by or at the behest of the defendant, an agreement between the government and the defense to dispose of the case by a guilty plea on or after the scheduled trial date, or the breakdown of a plea on or immediately before the trial date, and allowing reasonable time to prepare for an expedited trial after the circumstance giving rise to a tolling or extension of the 100-day period no longer exists. If the time within which the person must be indicted or the trial must commence is tolled or extended, an indictment must be returned at least 10 days before the new trial date.

(2) For the purposes of determining the maximum period of detention under this section, the period shall begin on the latest of:

(A) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia after arrest;

(B) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia following a re-arrest or order of detention after having been conditionally released under § 23-1321 or after having escaped;

(C) The date on which the trial of a defendant detained under subsection (b) of this section ends in a mistrial;

(D) The date on which an order permitting the withdrawal of a guilty plea becomes final;

(E) The date on which the defendant reasserts his right to an expedited trial following a waiver of that right;

(F) The date on which the defendant, having previously been found incompetent to stand trial, is found competent to stand trial;

(G) The date on which an order granting a motion for a new trial becomes final; or

(H) The date on which the mandate is filed in the Superior Court after a case is reversed on appeal.

(3) After 100 days, as computed under paragraphs (2) and (4) of this section, or such period or periods of detention as extended under paragraph (1) of this section, the defendant shall be treated in accordance with § 23-1321(a) unless the trial is in progress, has been delayed by the timely filing of motions, excluding motions for continuance, or has been delayed at the request of the defendant.

(4) In computing the 100 days, the following periods shall be excluded:

(A) Any period from the filing of the notice of appeal to the issuance of the mandate in an interlocutory appeal;

(B) Any period attributable to any examination to determine the defendant's sanity or lack thereof or his or her mental competency or physical capacity to stand trial;

(C) Any period attributable to the inability of the defendant to participate in his or her defense because of mental incompetency or physical incapacity; and

(D) Any period in which the defendant is otherwise unavailable for trial.

(i) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(July 29, 1970, 84 Stat. 644, Pub. L. 91-358, title II, § 210(a); Sept. 17, 1982, D.C. Law 4-152, § 3, 29 DCR 3479; July 28, 1989, D.C. Law 8-19, § 2(a), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(a), 37 DCR 24; July 3, 1992, D.C. Law 9-125, § 3, 39 DCR 2134; Aug. 20, 1994, D.C. Law 10-151, § 602(a), 41 DCR 2608; May 16, 1995, D.C. Law 10-255, § 17, 41 DCR 5193; July 25, 1995, D.C. Law 11-30, § 6, 42 DCR 1547; June 3, 1997, D.C. Law 11-273, § 3(b), 43 DCR 6168; June 3, 1997, D.C. Law 11-275, § 14(f), 44 DCR 1408; June 12, 2001, D.C. Law 13-310, § 2(b), 48 DCR 1648; May 17, 2002, D.C. Law 14-134, § 7, 49 DCR 408; May 5, 2007, D.C. Law 16-308, § 3(a), 54 DCR 942; Dec. 10, 2009, D.C. Law 18-88, § 223, 56 DCR 7413.)

Section references. — This section is referred to in §§ 23-1321, 23-1323, 23-1324, and 23-1329.

Prior Codifications. — 1981 Ed., § 23-1322.

1973 Ed., § 23-1322.

Effect of amendments. — D.C. Law 13-310, in subsec. (a), inserted “or misdemeanor” following “felony” in par. (1)(A), and inserted “or, when a hearing under § 23-1329(b) is requested, is likely to violate a condition of release” in par. (2); in subsec. (f)(2)(B), substituted “immediate arrest or” for “the immediate”; and rewrote subsec. (h) which had read:

“(h) The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days. However, the person may be detained for an additional period not to exceed 20 days from the date of the expiration of the 100-day period on the basis of a petition submitted by the attorney for the government and approved by the judicial officer. The additional period of detention may be granted only on the basis of good cause shown and shall be granted only for the additional time required to prepare for the expedited trial of the person. For the purposes of determining the maximum period of detention under this section, the period shall not exceed 120 days. The period shall:

“(1) Begin on the date defendant is first detained after arrest; and

“(2) Include the days detained pending a detention hearing and the days in confinement on temporary detention under subsection (a) of this section whether or not continuous with full pretrial detention. The defendant shall be

treated in accordance with § 23-1321(a) unless the trial is in progress, has been delayed by the timely filing of motions excluding motions for continuance, or has been delayed at the request of the defendant.”

D.C. Law 14-134, in subsec. (a)(1)(C), substituted “Probation, parole, or supervised release” for “Probation or parole”; and in subsec. (e)(3)(B), inserted “on supervised release,” following “parole.”

D.C. Law 16-308, in subsec. (c), substituted “imitation firearm, or other deadly or dangerous weapon,” for “or imitation firearm,” in par. (1), deleted “; or” from the end of par. (3), substituted a semicolon for a period at the end of par. (4), and added pars. (5), (6), and (7).

D.C. Law 18-88, in subsec. (c), substituted “probable cause” for “a substantial probability” in the lead-in language, deleted “or” from the end of par. (6), rewrote par. (7), and added par. (8). Prior to amendment, par. (7) of subsec. (c) read as follows: “(7) Committed CPWL, carrying a pistol without a license.”

Temporary Amendment of Section. — D.C. Law 14-115, in subsec. (a)(1)(C), substituted “Probation, parole, or supervised release,” for “Probation, or parole”; and, in subsec. (e)(3)(B), inserted “on supervised release,” following “parole.”

Section 4(b) of D.C. Law 14-115 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 602 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary (90 day) amendment of section, see § 2 of Sentencing Reform Technical Amendment Emergency Act of 2001 (D.C. Act 14-148, October 23, 2001, 48 DCR 10195).

For temporary (90 day) amendment of section, see § 2 of Sentencing Reform Technical

Amendment Congressional Review Emergency Act of 2002 (D.C. Act 14-240, January 28, 2002, 49 DCR 1024).

For temporary (90 day) amendment of section, see § 301 of Enhanced Crime Prevention and Abatement Emergency Amendment Act of 2006 (D.C. Act 16-446, July 21, 2006, 53 DCR 6477).

For temporary (90 day) amendment of section, see § 101 of Crime Reduction Initiative Emergency Amendment Act of 2006 (D.C. Act 16-491, October 19, 2006, 53 DCR 8818).

For temporary (90 day) amendment of section, see § 102(a) of Crime Reduction Initiative Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-9, January 16, 2007, 54 DCR 1471).

For temporary (90 day) amendment of section, see § 3(a) of Crime Reduction Initiative (Rebuttable Presumption) Congressional Review Emergency Act of 2007 (D.C. Act 17-24, April 19, 2007, 54 DCR 4033).

For temporary (90 day) amendment of section, see § 402 of Crime Bill Emergency Amendment Act of 2009 (D.C. Act 18-129, June 29, 2009, 56 DCR 5495).

Legislative history of Law 4-152. — For legislative history of D.C. Law 4-152, see Historical and Statutory Notes following § 23-1321.

Legislative history of Law 8-19. — Law 8-19, the “Law Enforcement Temporary Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-184, which was retained by Council. The Bill was adopted on first and second readings on March 7, 1989 and April 4, 1989, respectively. Signed by the Mayor on April 17, 1989, it was assigned Act No. 8-22 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-120. — Law 8-120, the “Law Enforcement Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-185, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 1989, and December 19, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-129 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-125. — For legislative history of D.C. Law 9-125, see Historical and Statutory Notes following § 23-1321.

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 23-1321.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 11-30. — Law 11-30, the “Technical Amendments Act of 1995,” was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995 and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

Legislative history of Law 11-273. — Law 11-273, the “Zero Tolerance for Guns Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-153, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-431 and transmitted to both Houses of Congress for its review. D.C. Law 11-273 became effective on June 3, 1997.

Legislative history of Law 11-275. — Law 11-275, the “Second Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Legislative history of Law 13-310. — For Law 13-310, see notes following § 13-1321.

Legislative history of Law 14-115. — Law 14-115, the “Sentencing Reform Technical Amendment Temporary Act of 2002,” was introduced in Council and assigned Bill No. 14-367, which was retained by the Council. The Bill was adopted on first and second readings on October 2, 2001, and November 6, 2001, respectively. Signed by the Mayor on November 19, 2001, it was assigned Act No. 14-173 and transmitted to both Houses of Congress for its review. D.C. Law 14-115 became effective on April 27, 2002.

Legislative history of Law 14-134. — Law 14-134, the “Innocence Protection Act of 2001,” was introduced in Council and assigned Bill No. 14-153, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 6, 2001, and December 4, 2001, respectively. Signed by the Mayor on December 21, 2001, it was as-

signed Act No. 14-222 and transmitted to both Houses of Congress for its review. D.C. Law 14-134 became effective on May 17, 2002.

Legislative history of Law 16-308. — Law 16-308, the “Rebuttable Presumption to Detain Robbery and Handgun Violation Suspects Act of 2006”, was introduced in Council and assigned Bill No. 16-895, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-643 and transmitted to both Houses of Congress for its review. D.C. Law 16-308 became effective on May 5, 2007.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 23-110.

CASE NOTES

ANALYSIS

Burden of proof, generally.

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—In general.

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Construction and application.

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—Burden of proof, dangerousness to community.

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—In general.

—Mootness, review.

Revocation of release.

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Validity.

Burden of proof, generally.

In making finding as to commission of offense under pretrial detention statute, trial court must continue to employ probable cause standard. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Pretrial detention statute requiring that judicial officer find by substantial probability that accused committed offense for which he is charged is not constitutionally infirm on basis that it does not require proof beyond a reasonable doubt. D.C. Code § 23-1322(b)(2)(C).

United States v. Edwards, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

Pretrial detention statute did not unconstitutionally deny defendant due process of law by establishing “clear and convincing” evidence as standard of proof in detention hearings rather than “reasonable doubt” standard. D.C. Code § 23-1322. *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

Conditions of detention.

— In general.

District court order requiring the establishment of particular procedures in District of Columbia jail with respect to pretrial detainees requiring restraints, including the keeping of a log reflecting use of restraints was not superfluous and would be affirmed, although it was deficient in several minor respects which district court could correct, contrary to claim of defendant officials that the order was superfluous since they already followed most of the procedures set forth in order. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Responsibilities of jail holding pretrial detainee to provide tolerable conditions of confinement increase as the period of detainee’s incarceration grows longer. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Courts will not engage in the balancing of pretrial detainee’s liberty interests against government’s interest in controlling crime and managing institution of pretrial detention in administratively feasible manner to determine whether the conditions of confinement violate detainee’s constitutional rights if the conditions of pretrial confinement are otherwise violative of constitution. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

District court order requiring defendant officials to establish a classification system for plaintiff pretrial detainees in District of Columbia jail was affirmed insofar as it required the devising of a classification scheme for maxi-

mum security assignments and contact visits, and district court could proceed with fashioning of an order on subject of contact visits if so advised; such order would be subject to later appeal. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Conditions of confinement that impede pretrial detainee's preparation for his defense, apart from the fact of confinement itself, or that are so harsh or intolerable as to induce him to plead guilty, or that damage his appearance or mental alertness at trial, are constitutionally suspect and can be justified only by the most compelling necessity. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Conditions of confinement that are likely to impair pretrial detainee's mental or physical health should be subjected to closest scrutinies and can be justified only by the most compelling necessity. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Order of district court requiring District of Columbia officials to provide bed linen and towels and clean clothing to pretrial detainees on a weekly basis was affirmed but as long as inmates had access to hot water and detergent there was no constitutional violation in contemplating that inmates would arrange their own cleaning of underclothing. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

While some form of recreation was necessary to prevent mental or physical harm to pretrial detainees in District of Columbia jail, district court order requiring one hour of outdoor recreation per day for each detainee was not affirmed and record was remanded for further findings concerning quality, duration and location of necessary recreation with reference to administrative necessities of jail. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

District court order requiring officials at District of Columbia jail to provide psychiatric examinations for pretrial detainees, whose unusual behavior suggest possible mental illness, within 24 hours of discovery of behavior, and for the transfer of any detainee found to be mentally ill to a hospital with appropriate facilities within 48 hours of such finding was affirmed. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Principles of equity, comity, federalism and abstention did not prevent federal court from granting injunctive relief against allegedly unconstitutional conditions at the District of Columbia jail used to house pretrial detainees, notwithstanding claim that criminal prosecutions against such detainees were pending in the District of Columbia superior court. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Pretrial detainees generally retain more rights than convicted prisoners, so that federal court's duty to protect constitutional rights conceivably may justify more intrusive relief by federal courts in the local prison system with respect to pretrial detainees than sentenced inmates. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Transfer of mentally ill pretrial detainee, incarcerated in District of Columbia jail, to an appropriate hospital facility after diagnosis of mental illness did not come solely within the category of habeas corpus although habeas corpus might afford alternative relief for inmate challenging this condition of confinement; exhaustion of remedies in the Superior Court of the District of Columbia was not required as a prerequisite to federal relief regarding handling of pretrial detainees having diagnosed mental illnesses. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Determination of whether conditions of confinement of pretrial detainees violate their constitutional rights is to be ascertained by balancing the detainees' liberty interests against government's interest in controlling crime and managing institution of pretrial detention in administratively feasible manner. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Each restriction of the jail regimen with respect to pretrial detainees must be carefully examined to determine if it is justified by substantial necessities of jail administration; to evaluate necessities court will look to the needs of state to produce detainee for trial, to maintain security of jail, or generally to sustain institution of pretrial detention at feasible cost. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Presumption of innocence of pretrial detainee requires that, to as great an extent as practically possible, pretrial detainee leaves jail no worse off than he entered it. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

— Juveniles, conditions of detention.

Appeal challenging temporary placement of child in need of supervision (CINS) in detention facility, on ground that statute prohibited placement of children adjudicated in need of supervision in a facility for delinquents, was not rendered moot by child's subsequent placement in group home, considering that limited time that child remains in detention facility while awaiting placement in a foster home or an institution prevents full litigation of issue before cessation of challenged action. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

Trial court's order for temporary detention of child adjudicated in need of supervision (CINS) at detention facility was not reversible error, even though facility contained delinquent youths, and statute does not permit placement of CINS children in a facility for delinquent children, since facility was not a facility maintained for adjudicated and committed delinquent youths, although due to judicial orders, half of the population was in that status on date of hearing; rather, receiving home was a facility designed, and generally used for detained youth prior to trial, and court's order imposed strict conditions for separation of child from any delinquents held at facility. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

Record on appeal from order for pretrial detention of juvenile pending trial on a delinquency petition charging heroin possession disclosed no abuse of discretion by the trial judge. In re A.W., 353 A.2d 686, 1976 D.C. App. LEXIS 463 (1976).

Construction and application.

State's duty to control crime justifies in first instance pretrial detention. Campbell v. McGruder, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Pretrial detention may not violate a detainee's right to bail. Campbell v. McGruder, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

District of Columbia Code warrant provisions are not inapplicable to warrants issued in connection with federal offenses. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-501, 23-521(f)(5), 23-522(c)(1), 23-523(b), 23-1322, 33-414(h); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41(d), 18 U.S.C. United States v. Gooding, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Pretrial detention clearly has substantial relation to preventing injury to public and thus falls within scope of Congress' power to legislate for District of Columbia. U.S. Const. Amend. 5; D.C. Code § 23-1322. United States v. Edwards, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

"Preventive detention" is the detaining of accused persons to prevent them from engaging in future antisocial behavior. Ireland v. United States, 406 A.2d 1259, 1979 D.C. App. LEXIS 442 (1979).

The Bail Reform Emergency Amendment Act

of 1992 is applied retroactively. United States v. Moore, 120 WLR 1461 (Super. Ct. 1992).

Contempt for violating conditions of release.

Stay-away order, as orally modified by trial judge, failed to meet the specificity requirement in provision of pretrial detention statute governing release orders, as was required to sustain conviction for criminal contempt based on violation of stay away order; although court's written order stated that defendant was to stay away from "one-block radius" of specified address, court orally warned him to stay away from "a one block area" of address, thereby creating an ambiguity regarding the exact area from which defendant was barred. Vaas v. United States, 852 A.2d 44, 2004 D.C. App. LEXIS 295 (2004).

In entering release orders, trial courts should endeavor to set more defined parameters, using maps, if practicable, that can be attached to the stay-away orders to provide defendants with clear guidance about this aspect of a release order; this is particularly important in cases where the defendant lives in the immediate neighborhood of the location from which he is barred. Vaas v. United States, 852 A.2d 44, 2004 D.C. App. LEXIS 295 (2004).

Defendant did not receive sufficient notice that she was required to refrain from having indirect contact with individual through his attorney as condition of her pretrial release as required for criminal contempt conviction for failure to obey judicial order, as condition of pretrial release, to stay away from individuals involved in her upcoming prosecution for malicious destruction of property; sole written statement of pretrial release conditions did not command defendant to stay away from third parties associated with individuals, and trial judge's oral instruction as to third parties was general, such that defendant could not reasonably infer from those words that she was not to have contact with individual's attorney. D.C. Code 1981, §§ 23-1321(a)(2), 23-1322(f)(1); Criminal Rule 42(b). Smith v. United States, 677 A.2d 1022, 1996 D.C. App. LEXIS 100 (1996).

Continuances.

Three-day continuance in pretrial detention proceedings was not constitutionally insufficient time for defendant to prepare. D.C. Code § 23-1322(c)(3); U.S. Const. Amend. 5. United States v. Edwards, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

Dangerousness to community.

— Burden of proof, dangerousness to community.

Trial court, in making finding of dangerous-

ness under pretrial detention statute, must employ standard of clear and convincing evidence; overruling *De Veau v. United States*, 454 A.2d 1308. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Standard of clear and convincing evidence used to make finding of dangerousness under pretrial detention statute applies to ultimate determination of dangerousness which trial court must make, not to each individual fact on which court relies. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

At hearing held under pretrial detention statute, clear and convincing evidence of defendant's dangerousness can be established by hearsay, and there is no presumption in favor of live testimony at such hearings. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Trial judge may consider hearsay character of Government's evidence in determining whether clear and convincing showing of defendant's dangerousness has been made at pretrial detention hearing; trial judge may require that hearsay evidence be buttressed by otherwise admissible evidence to meet clear and convincing standard. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Defendants are constitutionally entitled to demand proof by clear and convincing evidence that they are so dangerous that no combination of conditions of release will serve to adequately protect the community and that they must be deprived of their liberty before their trial by jury. *United States v. Cooper*, 115 WLR 1741 (Super. Ct. 1987).

— In general.

In absence of statutory presumption of defendant's future dangerousness, a showing of substantial probability that defendant committed the charged offense, considered in conjunction with the nature and circumstances of the charged offense, may be enough to provide clear and convincing evidence of future dangerousness, as basis for pretrial detention, but only if the offense truly signals that the defendant threatens to engage in particular future criminal conduct. *Blackson v. United States*, 897 A.2d 187, 2006 D.C. App. LEXIS 151 (2006).

Pretrial detention based on finding, by clear and convincing evidence, that no conditions of release would protect community if the accused were released, in which evidence of dangerousness consisted only of substantial probability that, and manner in which, the accused committed crimes of aggravated assault and cruelty to child, did not violate due process, as neither pretrial detention statute nor Fifth

Amendment required weight of evidence against accused to trump every other consideration in cumulative predictive judgment of dangerousness, where accused admitted striking three and one-half months' old baby three to four times over several days, resulting in multiple skull and rib fractures. U.S.C. Const. Amend. 5; D.C. Code 1981, § 23-1322(b)(2), (c), (e)(1-4). *Jones v. United States*, 687 A.2d 574, 1996 D.C. App. LEXIS 297 (1996).

Trial court had rational basis for decision to detain defendant without bond pending trial, though trial had been continued after mistrial, where defendant had prior criminal history and evidence at previous trial established that he would be danger to the community. D.C. Code 1981, §§ 23-1322(c)(5), 23-1324(b). *Martin v. United States*, 614 A.2d 51, 1992 D.C. App. LEXIS 232 (1992).

With respect to pretrial detention, defendant received adequate notice of specific instances of his past and present conduct upon which the Government relied to show his dangerousness to the community. D.C. Code §§ 23-1321(b), 23-1322(b)(2), (b)(2)(B)(i). *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

Pretrial detention statute was not unconstitutionally vague as to defendant, on theory that Congress left meaning of "past conduct" supporting finding of dangerousness to discretion of judicial officer, where crimes with which defendant was charged and crimes which he admitted he had committed in four months preceding his arrest, rape, sodomy, two burglaries, and 17 robberies, as well as adjudication of his juvenile social file, were all prohibited conduct under concededly valid criminal laws. D.C. Code §§ 23-1321(b), 23-1322(b)(2)(B), 23-1331(3, 4). *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

In view of defendant's past record of convictions, character, and fact of conviction for inducing a female to engage in prostitution, compelling a female by threats and duress to live a life of prostitution against her will, assault with a dangerous weapon, and mayhem and malicious disfigurement, order setting postconviction bail was unsupported respecting necessary finding as to nondangerousness, and defendant should have been ordered detained pending appeal and should have remained in custody, not because he lacked means to make bail, but for reason that his release would present danger to community. D.C. Code §§ 23-

1321(d, e), 23-1322(b)(3), 23-1323, 23-1325(b, c). *Villines v. United States*, 312 A.2d 304, 1973 D.C. App. LEXIS 417 (1973).

Dismissal.

Even if motions judge abused her discretion in granting prosecution one-day continuance and permitting prosecutor to seek immediate superseding indictment after expiration of statutory time period for filing indictment, proper remedy was to reconsider defendant's detention without bond, not terminate prosecution. D.C. Code 1981, § 23-1322(h). *Mack v. United States*, 637 A.2d 430, 1994 D.C. App. LEXIS 13 (1994).

Evidence.

— Examination of witnesses, evidence.

If Government's case turns upon testimony of identification witness, and defense counsel forecasts irreparable suggestivity if witness appears at preliminary hearing, his remedy lies in a motion for a lineup order, to assure that identification witness will first view the suspect at a lineup, rather than in the magistrate's hearing room; the magistrate or judge should grant this motion, unless cause to the contrary is shown, since a lineup conducted by police, with attendance of defense counsel, assures or at least promotes reliability of identification and is therefore in interest of justice. D.C. Code § 23-1322. *United States v. Smith*, 473 F.2d 1148, 1972 U.S. App. LEXIS 6361 (C.A.D.C. 1972).

Trial court's failure, before ordering pretrial detention of defendant, to find by clear and convincing evidence that no conditions of release would reasonably assure public safety violated detention statute, though detention order submitted by government after detention hearing did recite ultimate clear and convincing evidence finding; when trial court signed such order, defendant had been detained in violation of statute's requirements for two months. *Blackson v. United States*, 897 A.2d 187, 2006 D.C. App. LEXIS 151 (2006).

Under pretrial detention statute, cross-examination for limited purpose of impeaching witness' credibility is insufficient reason to compel witness' presence and the requirement of preliminary proffer regarding manner in which witness' testimony will tend to negate substantial probability that accused committed the charged offense is reasonable limitation on the accused's right to call witnesses in his favor. D.C. Code §§ 23-1322, 23-1322(a)(1), 23-1324(d)(2). *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

Pretrial detention statute provided procedure for detention hearings which satisfied

requirements of fundamental fairness and did not deprive defendant of due process by denying him right to cross-examine witnesses who alleged that he had threatened them. D.C. Code § 23-1322. *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

— In general.

In making its determination of defendant's future dangerousness, as basis for pretrial detention, the trial court was required to consider more than just the nature and circumstances of the offense charged and the weight of the evidence against defendant; the court also was obliged to take into account both her personal history and characteristics, including her lack of any criminal record, the absence of any history of drug or alcohol abuse, her family and community ties, and her gainful employment, and the nature and seriousness of the danger to any person or the community that would be posed by defendant's release. *Blackson v. United States*, 897 A.2d 187, 2006 D.C. App. LEXIS 151 (2006).

It is within trial court's sound discretion to determine appropriate scope and extent of evidentiary presentations and cross-examination at pretrial detention hearing, in light of proffer made and trial court's assessment of evidence developed at hearing. D.C. Code 1981, § 23-1322. *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Notwithstanding return of indictment by grand jury, accused has right under Bail Reform Act to present evidence at pretrial detention hearing regarding nature and circumstances of charged offense and weight of evidence against accused, for purpose of providing information that trial court must consider in making individualized determination of whether accused should be detained pretrial. D.C. Code 1981, § 23-1322(b, d, e). *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Considerations of judicial efficiency caution against permitting pretrial detention hearing to turn into trial of indicted offense or means of discovery. D.C. Code 1981, § 23-1322. *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

With respect to pretrial detention, Government may proceed by use of proffer and hearsay, subject to discretion of judge as to nature of proffer and need for admissible evidence. D.C. Code § 23-1322(b)(2)(C); U.S. Const. Amend. 6. *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

In pretrial detention proceeding, Government may proffer a complainant's hearsay statements and may require a proffer from

defense before compelling presence of adverse witness. U.S. Const. Amends. 6, 14; D.C. Code § 23-1322. *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

— Psychiatric examinations, evidence.

If psychiatrist in pursuing Frendak inquiry explores details of offense and defendant's alleged complicity, court should take adequate measures to protect Fifth Amendment rights, such as limiting initial access to report to defense and amicus counsel at in camera hearing. U.S. Const. Amend. 5. *Anderson v. Sorrell*, 481 A.2d 766, 1984 D.C. App. LEXIS 482 (1984).

When trial court decides that psychiatrist's assistance is necessary to resolve Frendak inquiry, court will have two options: (1) suggest that psychiatrist conduct inquiry, if possible, without discussing details of offense and defendant's alleged complicity, and order psychiatrist to inform court—and receive permission—if there remains asserted need to explore such details; (2) permit Frendak inquiry as broad as deemed necessary by psychiatrist, subject only to informing court, but not counsel, in written report and recommendation, as to whether details of offense and defendant's alleged complicity were discussed. *Anderson v. Sorrell*, 481 A.2d 766, 1984 D.C. App. LEXIS 482 (1984).

— Testimony of accused, evidence.

Defendant was denied constitutional right to testify in his own behalf under oath in proceeding to hold him in criminal contempt for violation of condition of pretrial release that he refrain from illegal drug use when trial court refused to permit defendant to describe his alleged presence in room when others were smoking crack cocaine to lay putative foundation for passive inhalation defense and to permit court to judge his demeanor. Criminal Rule 42(b); D.C. Code 1981, § 23-1329(c); U.S. Const. Amends. 5, 14. *Beckham v. United States*, 609 A.2d 1122, 1992 D.C. App. LEXIS 146 (1992).

Trial court's erroneous refusal to allow defendant to testify in criminal contempt proceeding which was based upon alleged violation of condition of pretrial release that defendant refrain from illegal drug use was not harmless, although defendant had previously made unsworn statements to trial court denying illegal drug use in response to positive drug test results; unsworn statements consisted of defendant uttering 15 words in response to three questions by court which was not the equivalent of right to testify. Criminal Rule 42(b); D.C. Code 1981, § 23-1329(c); U.S. Const. Amends.

5, 14. *Beckham v. United States*, 609 A.2d 1122, 1992 D.C. App. LEXIS 146 (1992).

Financial conditions on release.

— Amount, financial conditions on release.

Trial court, after reasonably rejecting non-monetary release conditions, was not required to impose money bail which would guarantee defendant's pretrial liberty and, since amount was reasonably related to risk of flight, it was not excessive under Eighth Amendment, even though defendant was unable to post it, and defendant might be lawfully detained for failure to post the bail. D.C. Code §§ 23-1321 to 23-1323, 23-1321(a), 23-1324(b); U.S. Const. Amend. 8. *Ireland v. United States*, 406 A.2d 1259, 1979 D.C. App. LEXIS 442 (1979).

Although accused charged with grand larceny and released on personal recognizance bond allegedly threatened a witness and was arrested on charge of obstructing justice, setting of surety bond of \$5,000 was not justified on theory that, in view of the serious nature of the pending charges, amounting to an assault on integrity of judicial system, and the unemployment of accused, accused was unreliable and unlikely to abide by nonfinancial conditions of release; thus case must be remanded for proceedings on issue of pretrial detention or appropriate conditions of release. D.C. Code §§ 17-306, 23-1321, 23-1322, 23-1322(a), (a)(3), (d). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

— In general.

Monetary conditions of pretrial release may not be used to assure against dangerousness, but nonmonetary conditions may be used for that purpose. D.C. Code §§ 17-306, 23-1321, 23-1321(a), 23-1322(a)(3). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Under Bail Reform Act of 1966, and under District of Columbia local bail provisions, a money bond may not be used to assure detention. D.C. Code §§ 23-1321(d, e), 23-1322(b)(3), 23-1323, 23-1325(b, c). *Villines v. United States*, 312 A.2d 304, 1973 D.C. App. LEXIS 417 (1973).

Findings.

Finding by trial judge that defendant was a person described in pretrial detention statute was sufficient to permit Court of Appeals to determine that court had found allegations that defendant threatened government witnesses to be true by clear and convincing evidence. D.C. Code § 23-1322(a)(1-3). *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

Grounds for grant or denial of release, generally.

Defendant's past conduct is important evi-

dence, perhaps the most important, in predicting his probable future conduct, with respect to determination of whether preventive detention is warranted in an assault with intent to kill while armed (AWIKWA) case; therefore, substantial weight must be accorded to presence in, or absence from, the defendant's record of convictions of dangerous crimes or a history of violent conduct. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Preventive detention of defendant was not warranted, in an assault with intent to kill while armed (AWIKWA) case; though alleged attempted assassination was chilling, in that man shot was under a car, weight of evidence against defendant was marginal, defendant had no criminal record with exception of single expunged conviction, there was no evidence of recent drug or alcohol involvement, defendant apparently had unusually strong community support and ties, and defendant was not on probation, parole, or other supervised release at time of charged offense. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Order of pretrial detention was not supported by required statutory proceedings, as trial court did not consider accused's proffered evidence concerning nature and circumstances of charged offense and weight of evidence against accused, and trial court ordered detention based solely on fact of indictment and accused's prior criminal history. D.C. Code 1981, § 23-1322(b, d, e). *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Showing of defendant's lengthy criminal record spanning 22 years, highly assaultive nature of defendant's past offenses and gravity of pending charge of assault with deadly weapon, together with failure of defense to present any suitable structured program of release, supported finding that no condition or combination of conditions of release would reasonably assure witness' safety and that defendant should therefore be committed to pretrial detention. D.C. Code §§ 23-1322, 23-1322(a)(3). *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

Hearing required.

Pretrial detention implicates liberty interest and requires fair hearing within mandates of procedural due process. D.C. Code § 23-1322(b)(1), (b)(2)(A), (c)(1, 4, 5); U.S. Const. Amend. 14. *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

Under District of Columbia Code limiting detention to 60 days within which detainee must be brought to trial or bail set and providing for detention to be ended whenever a judicial officer finds that subsequent event has eliminated basis for such detention, pretrial detention is regulatory and not penal in character, so it can be imposed without triggering the full procedural protections of a criminal trial under the Fifth and Sixth Amendments. D.C. Code § 23-1322(d)(2)(A, B); U.S. Const. Amends. 5, 6. *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

Due process rights of probationer were violated during probation revocation hearing where probationer was not apprised of when revocation hearing would take place or specific grounds upon which Government intended to seek revocation. D.C. Code §§ 22-2901, 22-3502, 23-1322(e). *Colter v. United States*, 392 A.2d 994, 1978 D.C. App. LEXIS 323 (1978).

Obstruction of justice.

Record from pretrial hearing in misdemeanor threats prosecution did not support finding that victim was "prospective witness" in separate, ongoing child neglect proceeding involving defendant, victim, and their daughter; thus, finding did not support hearing commissioner's order for preventive detention under statute authorizing such detention when there is serious risk that defendant will threaten, injure, or intimidate prospective witness. D.C. Code 1981, §§ 22-507, 23-1322(b)(1)(C). *Covington v. United States*, 698 A.2d 1033, 1997 D.C. App. LEXIS 199 (1997).

Statute authorizing preventive detention when there is serious risk that defendant will threaten, injure, or intimidate prospective witness requires nexus between defendant's coercive conduct and witness' status as witness, despite amendment deleting language requiring defendant to have obstructionist purpose; statute remains moored in obstruction of justice jurisprudence. D.C. Code 1981, § 23-1322(b)(1)(C). *Covington v. United States*, 698 A.2d 1033, 1997 D.C. App. LEXIS 199 (1997).

Even though defendant contested complaining witness' version of events which led to defendant's arrest for obstructing justice, had trial court inquired into that charge and concluded that there was clear and convincing evidence that defendant was guilty of obstruction of justice, his detention would have been warranted pursuant to pretrial detention statute. D.C. Code § 23-1322(a)(3). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Court is not prevented by defendant's right to bail from acting to protect witnesses from

threats by defendant, thus safeguarding integrity of its own process. D.C. Code § 23-1322. *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

As applied after showing that defendant had threatened witnesses, pretrial detention statute was not unconstitutional as resulting in denial of defendant's right to bail prior to trial. D.C. Code §§ 23-1322, 23-1322(a)(3); U.S. Const. Amend. 8. *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

Probable cause.

Pretrial detention is permitted when there is probable cause to believe the suspect has committed a crime. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Review.

— In general.

The appellate court will defer to the trial court's factual findings, regarding pretrial detention, unless they are clearly erroneous, and so long as the evidence provides sufficient support for the trial court's order, the appellate court will not substitute its judgment of a defendant's future dangerousness for that of the judge who heard the evidence. *Blackson v. United States*, 897 A.2d 187, 2006 D.C. App. LEXIS 151 (2006).

Where, although government's proffer of proof that defendant had made threats against prospective witnesses as technically made before government made its motion for pretrial detention, defendant and his counsel were present at time of proffer but made no effort to rebut it and both failed to ask court for additional time to gather evidence to rebut allegation of threats or took advantage of actual offer of court for such time, any error made by court in relying on government's proffer did not prejudice defendant and was harmless. D.C. Code §§ 23-1322, 23-1322(b)(2)(C), (c)(4, 5). *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

— Mootness, review.

Given history of defendant District of Columbia officials' grudging resistance, ineffectiveness of their previous efforts at compliance with court orders designed to relieve unconstitutional prison conditions with respect to pretrial detainees and the flagrant and shocking character of past violations, district court was fully justified in concluding that case was not moot because of efforts officials had made to alleviate some of the conditions including construction of additional facilities. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

There was sufficient evidence to support finding that opening of new detention facilities

subsequent to institution of suit challenging constitutionality of conditions of incarceration for pretrial detainees in District of Columbia jail did not render moot request of plaintiff detainees for equitable relief. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Where subsequent to time amended complaint was filed challenging constitutionality of preventive detention provisions of District of Columbia Court Reform and Criminal Procedure Act by plaintiff who had been incarcerated under such provisions, the District of Columbia Court of Appeals vacated the order of the Superior Court under which a plaintiff had been detained and as result of proceedings on remand a parole violation warrant was executed against plaintiff who was being detained pending trial as a parole violator, the complaint would be dismissed as moot as against contention that in view of short term nature of preventive detention orders, appellate review of detention orders, at least if limited to individual cases of detention, would always be frustrated on mootness grounds. D.C. Code § 23-1322(e). *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

Where subsequent to time amended complaint was filed challenging constitutionality of preventive detention provisions of District of Columbia Court Reform and Criminal Procedure Act by plaintiff who had been incarcerated under such provisions, the District of Columbia Court of Appeals vacated the order of the superior court under which plaintiff had been detained, and as result of proceedings on remand a parole violation warrant was executed against plaintiff who was being detained pending trial as a parole violator, the complaint would be dismissed as moot as against contention that "collateral consequences" attached to original determination of superior court that plaintiff should be preventively detained. D.C. Code § 23-1322(e). *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

Court of Appeals would exercise its discretion to vacate its prior decision affirming defendant's pretrial detention; charge against defendant was dismissed and no indictment was filed against him during time limit imposed by pretrial detention statute, government made further disclosures that undermined the grounds for the original detention and joined in the motion to vacate, and existence of Court of Appeals' decision might have hindered defendant's efforts to reopen the order of detention. *Bryan v. United States*, 836 A.2d 581, 2003 D.C. App. LEXIS 692 (2003).

Court of Appeals would consider, on rehearing en banc, whether defendant had right at pretrial detention hearing to present evidence regarding nature and circumstances of charged offense and weight of evidence against defendant, though issue was moot as to defendant because he had pled guilty; defendant presented issue of importance that was likely to recur yet evade review, and issue was fully briefed by interested parties. D.C. Code 1981, § 23-1322(b, d, e); Court of Appeals Rule 40(e)(2). *Tyler v. United States*, 705 A.2d 270, 1997 D.C. App. LEXIS 238 (1997).

Defendant's guilty plea to obstruction of justice rendered moot his prior notice of appeal from pretrial order detaining defendant without bail, and thus, Court of Appeals would not consider that issue; issue involved narrow class of potential detainees, namely, those who attempt to obstruct justice in pending criminal case not of themselves but of another and whom Government seeks to detain solely under provision for obstructing justice. D.C. Code 1981, §§ 22-722(a)(1), 23-1322. *McClain v. United States*, 601 A.2d 80, 1992 D.C. App. LEXIS 6 (1992).

Fact that case may or may not be quasi class action is factor that the Court of Appeals may consider in deciding whether to dismiss action as moot; however, quasi class action is not necessary condition to deciding issue on merits in face of mootness challenge. *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Revocation of release.

Commitment of defendant to pretrial detention was not rendered improper by mere fact that government did not move for such detention until five months after defendant's arrest. D.C. Code § 23-1322. *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

Pretrial detention statute does not require that government make motion for pretrial detention as soon as grounds therefor become apparent or be thereafter foreclosed from making such motion. D.C. Code § 23-1322. *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

Severity of offense charged.

In absence of statutory presumption based on finding of substantial probability, government's burden to prove by clear and convincing evidence that defendant is properly subject to preventive detention cannot be satisfied simply by reference to known facts regarding crime of which defendant has been accused; court's calculus must include not only the nature and circumstances of offense charged, but also, inter alia, weight of evidence against defendant, defendant's history and criminal record, if any,

defendant's community ties and resources, whether defendant was on parole, probation, or release pending trial at time of charged offense, and danger that defendant's release would pose to any person in community. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

In most, if not all, cases, proof of (1) probable cause that defendant committed assault with intent to kill while armed (AWIKWA) and (2) facts and circumstances of charged offense will be insufficient, without more, to establish by clear and convincing evidence that a defendant is dangerous and preventively detainable. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Defendant can never be presumed to be dangerous, as would subject defendant to preventive detention, solely on basis of finding of probable cause that he has committed assault with intent to kill while armed (AWIKWA) or first-degree murder while armed (FDMWA). D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

It is trial court's duty to use sound and advised discretion and with a caution increasing in degree as offense dealt with increases in gravity, to insure integrity of the trial and all concomitant proceedings. *Pierce v. United States*, 402 A.2d 1237, 1979 D.C. App. LEXIS 388 (1979).

Standing.

Allegation that plaintiff had been arrested for a "dangerous crime" did not give him standing to challenge constitutionality of preventive detention provisions of District of Columbia Court Reform and Criminal Procedure Act on ground that plaintiff was inhibited or deterred in exercise of his First Amendment rights, where there was no allegation that plaintiff had any reason to fear that preventive detention would be sought, there was no allegation that plaintiff was or had been inhibited or deterred in exercise of First Amendment rights, and the "dangerous crime" charge against plaintiff had been dismissed. D.C. Code §§ 23-1322(a)(1-3), 23-1331(3); U.S. Const. Amend. 1. *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

"Organizational plaintiffs" consisting of individual trustees of Public Defender Service of District of Columbia, Washington Urban League Incorporated, and American Civil Liberties Union Fund of the national capital area had no standing to challenge constitutionality of District of Columbia Reform and Criminal Procedure Act of 1970, where allegations failed

to set out any "injury in fact" to the plaintiffs. D.C. Code §§ 23-1322, 23-1323; U.S. Const. art. 3, § 1 et seq. *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

Plaintiffs had no standing as federal taxpayers to challenge constitutionality of District of Columbia Reform and Criminal Procedure Act on theory that the plaintiffs' tax payments and those of other taxpayers would be used to defray costs of pretrial detention of persons pursuant to the Act, since the Act serves primarily to "regulate" one aspect of administration of criminal justice within the District of Columbia, and any expenditure of funds in administration of the preventive division was only "incidental" in character. D.C. Code §§ 23-1322, 23-1323; U.S. Const. art. 1, § 8, cl. 17. *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

Plaintiffs had no standing as District of Columbia taxpayers to challenge constitutionality of District of Columbia Court Reform and Criminal Procedure Act on theory that plaintiffs' tax payments and those of other taxpayers of District would be used to defray costs of pretrial detention of persons pursuant to the Act, since the preventive detention provisions were not part of a "spending program" but served primarily to "regulate" one aspect of administration of criminal justice within the district. D.C. Code §§ 23-1322, 23-1323; U.S. Const. art. 3, § 1 et seq. *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

A complaint alleging that plaintiff "is subject to pre-trial detention if charged with another such offense [crime of violence]" did not state a justiciable case or controversy so as to give standing to challenge constitutionality of District of Columbia Court Reform and Criminal Procedure Act, where, inter alia, there were no allegations of possibility of another arrest for a "crime of violence," and there was no allegation that plaintiff was inhibited or deterred in exercise of his First Amendment rights. D.C. Code §§ 23-1322, 23-1323; U.S. Const. Amend. 1. *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

The denial of a motion to reconsider a pretrial detention order is an appealable final order in its own right, cognizable by the appellate court, even though the defendant did not take or could not have taken a timely appeal from the original order of detention. *Blackson v.*

United States, 897 A.2d 187, 2006 D.C. App. LEXIS 151 (2006).

Third party custody.

Particularly when requested by accused, some form of third-party custody should be explored and rationally imposed or rejected before a monetary bond is selected. D.C. Code §§ 23-1321, 23-1322, 23-1322(a), (a)(3)(d). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Setting of third-party custody and intensity thereof as condition of pretrial release need not immediately result in release and custodian obtained, as well as degree of supervision undertaken, must be acceptable to court before release is permitted. D.C. Code §§ 17-306, 23-1321, 23-1321(a), 23-1322(a)(3). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Third-party custody is the first and preferred condition of the trial release to be used in conjunction with or in lieu of personal recognizance. D.C. Code §§ 17-306, 23-1321, 23-1321(a), 23-1322(a)(3). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Fact that acceptable third-party custodian is not available is no reason to reject pretrial release or to resort to surety bond. D.C. Code §§ 17-306, 23-1321, 23-1321(a), 23-1322(a)(3). *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Pretrial order setting \$10,000 bail for release of accused, who was charged with robbery and weapon assault in case of considerable notoriety and who exhibited self-oriented pattern of life with little or no recognition of social responsibility, and rejecting accused's plan to be placed in multiparty, 24-hour custody of his father, mother and grandmother was affirmed. D.C. Code § 23-1324(b). *Marshall v. United States*, 308 A.2d 766, 1973 D.C. App. LEXIS 336 (1973).

Time limitations on pretrial detention.

There are no time limitations on period of pretrial detention of person charged with assault with intent to kill while armed who has been found to be at risk of flight or to be danger to community; statute providing for such pretrial detention plainly and unambiguously did not include time limitations. D.C. Code 1981, § 23-1325(a). *McPherson v. United States*, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

Trial court could not, sua sponte, postpone trial date of defendant who had been detained prior to trial, so as to cause trial date to occur more than 100 days after defendant's first court appearance, without a request from government in form of a petition showing good cause. D.C. Code 1981, § 23-1322(h). *Best v. United*

States, 651 A.2d 790, 1994 D.C. App. LEXIS 246 (1994).

Statute setting forth maximum periods during which defendants can be incarcerated pending trial abrogates prior cases finding an inherent authority in court to order pretrial detention. D.C. Code 1981, § 23-1322. *Best v. United States*, 651 A.2d 790, 1994 D.C. App. LEXIS 246 (1994).

Statutory requirement that trial begin within 100 days of defendant's initial detention does not protect defendant's right to speedy trial pursuant to Sixth Amendment; rather, it vindicates defendant's Eighth Amendment right to bail. U.S. Const. Amends. 6, 8; D.C. Code 1981, § 23-1322(h). *Mack v. United States*, 637 A.2d 430, 1994 D.C. App. LEXIS 13 (1994).

Once a defendant has been ordered detained, the clock starts running and with certain exceptions he must be either tried or granted conditions of release within a maximum of 90 days, and the later addition of new charges, even though they may be very serious, cannot toll the maximum detention period or start it running again. D.C. Code 1981, §§ 23-1322, 23-1322(b-d), (d)(2). *Hazel v. United States*, 483 A.2d 1157, 1984 D.C. App. LEXIS 553 (1984).

The trial court had no authority, other than that provided by statute, to order pretrial detention of defendant and thus, when 90 days expired and defendant's trial had not begun following original order of detention, defendant had right to have conditions of release set like any other defendant awaiting trial notwithstanding subsequent filing of new charges of bribery and obstruction of justice. D.C. Code 1981, §§ 23-1322, 23-1322(b-d), (d)(2). *Hazel v. United States*, 483 A.2d 1157, 1984 D.C. App. LEXIS 553 (1984).

Effect of pretrial detention statute, aside from detention, is to ensure the defendant an expedited trial. D.C. Code § 23-1322. *Jones v. United States*, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

The running of the 100-day time for trial requirement of the Emergency Act for preventive detention is tolled when surety bond is set, even if defendant cannot make bond. *United States v. Boyd*, 120 WLR 1473 (Super. Ct. 1992).

It is only when the government subsequently requests that a defendant be preventively detained that the running of the 100-day time limit continues or starts to run again if the preventive detention request is made at some point after the defendant's first court appearance. *United States v. Boyd*, 120 WLR 1473 (Super. Ct. 1992).

Preventively detained defendants are not entitled to the modification of their detention status if the start of their trial is delayed because the court must resolve timely filed

pretrial motions. *United States v. Turner*, 121 WLR 105 (Super. Ct. 1992).

Defendant who waived his right to have his trial commence within 100 days when his attorney was granted a continuance because of his heavy caseload, and who then accepted the government's plea offer and entered a guilty plea but before being sentenced, was allowed to withdraw his guilty plea, which started a new 100-day period. *United States v. Alexander*, 122 WLR 969 (Super. Ct. 1994).

The legislature has deemed 9 months the outer limit for the government to investigate and decide whether it has sufficient evidence to request that a grand jury indict a case; the government should not be penalized for using this period of time to investigate a case adequately and properly by having some of this time charged against it in establishing a speedy trial violation. *United States v. Montgomery*, 123 WLR 1665 (Super. Ct. 1995).

Administering an oath to a witness to resolve a motion filed by the defendant tolls the running of the statutory 100-day requirement of subsection (h) of this section. *United States v. Turner*, 121 WLR 105 (Super. Ct. 1992).

Under subdivision (h)(2) of this section, the swearing of the first witness and then having him state his name for the record was not an insignificant event, and had the legal effect of tolling the running of the statutory period, and could not be considered as a mere pretense to avoid the 100-day requirements of subsection (h) of this section. *United States v. Turner*, 121 WLR 105 (Super. Ct. 1992).

Validity.

Statute providing that person charged with assault with intent to kill while armed may be held in pretrial detention if found to pose danger or risk of flight was not facially invalid under the due process clause. U.S.C. Const. Amend. 5; D.C. Code 1981, § 23-1325(a). *McPherson v. United States*, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

Statute providing that person charged with assault with intent to kill while armed may be held in pretrial detention if found to pose a danger or if risk of flight is presented was not facially invalid under the equal protection clause; government had a compelling interest for detaining those accused of drive-by shootings who pose a danger to community or a risk of flight, until trial, so long as detention continued to be of regulatory rather than punitive nature. U.S. Const. Amend. 5; D.C. Code 1981, § 23-1325(a). *McPherson v. United States*, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

District of Columbia's pretrial detention statute is not constitutionally overbroad, since it prohibits pretrial detention if less restrictive alternatives are available in individual case to

effect government's interest in protecting the community. D.C. Code § 23-1322(a)(1, 2), (b)(2). *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

Pretrial detention statute was not unconstitutional as denying due process by abridging presumption of innocence. D.C. Code § 23-1322. *Blunt v. United States*, 322 A.2d 579, 1974 D.C. App. LEXIS 239 (1974).

§ 23-1323. Detention of addict.

(a) Whenever it appears that a person charged with a crime of violence, as defined in section 23-1331(4), may be an addict, as defined in section 23-1331(5), the judicial officer may, upon motion of the United States attorney, order such person detained in custody for a period not to exceed three calendar days, under medical supervision, to determine whether the person is an addict.

(b) Upon or before the expiration of three calendar days, the person shall be brought before a judicial officer and the results of the determination shall be presented to such judicial officer. The judicial officer thereupon (1) shall treat the person in accordance with section 23-1321, or (2) upon motion of the United States attorney, may (A) hold a hearing pursuant to section 23-1322, or (B) hold a hearing pursuant to subsection (c) of this section.

(c) A person who is an addict may be ordered detained in custody under medical supervision if the judicial officer —

(1) holds a pretrial detention hearing in accordance with § 23-1322(d);

(2) finds that —

(A) there is clear and convincing evidence that the person is an addict;

(B) based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community; and

(C) on the basis of information presented to the judicial officer by proffer or otherwise, there is a substantial probability that the person committed the offense for which he is present before the judicial officer; and

(3) issues an order of detention accompanied by written findings of fact and the reasons for its entry.

(d) The provisions of § 23-1322(h) shall apply to this section.

(July 29, 1970, 84 Stat. 646, Pub. L. 91-358, title II, § 210(a); July 3, 1992, D.C. Law 9-125, § 4, 39 DCR 2134.)

Section references. — This section is referred to in § 23-1324.

Prior Codifications. — 1981 Ed., § 23-1323.

1973 Ed., § 23-1323.

Legislative history of Law 9-125. — For legislative history of D.C. Law 9-125, see Historical and Statutory Notes following § 23-1321.

CASE NOTES

Standing.

“Organizational plaintiffs” consisting of individual trustees of Public Defender Service of District of Columbia, Washington Urban League Incorporated, and American Civil Liberties Union Fund of the national capital area

had no standing to challenge constitutionality of District of Columbia Reform and Criminal Procedure Act of 1970, where allegations failed to set out any “injury in fact” to the plaintiffs. D.C. Code §§ 23-1322, 23-1323; U.S. Const. art. 3, § 1 et seq. *Dash v. Mitchell*, 356 F. Supp.

1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

Plaintiffs had no standing as federal taxpayers to challenge constitutionality of District of Columbia Reform and Criminal Procedure Act on theory that the plaintiffs' tax payments and those of other taxpayers would be used to defray costs of pretrial detention of persons pursuant to the Act, since the Act serves primarily to "regulate" one aspect of administration of criminal justice within the District of Columbia, and any expenditure of funds in administration of the preventive division was only "incidental" in character. D.C. Code §§ 23-1322, 23-1323; U.S. Const. art. 1, § 8, cl. 17. *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S.

808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

Plaintiffs had no standing as District of Columbia taxpayers to challenge constitutionality of District of Columbia Court Reform and Criminal Procedure Act on theory that plaintiffs' tax payments and those of other taxpayers of District would be used to defray costs of pretrial detention of persons pursuant to the Act, since the preventive detention provisions were not part of a "spending program" but served primarily to "regulate" one aspect of administration of criminal justice within the district. D.C. Code §§ 23-1322, 23-1323; U.S. Const. art. 3, § 1 et seq. *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

§ 23-1324. Appeal from conditions of release.

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to § 23-1321(c)(4) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Such motion shall be determined promptly.

(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, (2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, or (3) he is ordered detained or an order for his detention has been permitted to stand by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 23-1321(a). The appeal shall be determined promptly.

(c) In any case in which a judicial officer other than a judge of the court having original jurisdiction over the offense with which a person is charged orders his release with or without setting terms or conditions of release, or denies a motion for the pretrial detention of a person, the United States attorney may move the court having original jurisdiction over the offense to amend or revoke the order. Such motion shall be considered promptly.

(d) In any case in which —

(1) a person is released, with or without the setting of terms or conditions of release, or a motion for the pretrial detention of a person is denied, by a judge of the court having original jurisdiction over the offense with which the person is charged, or

(2) a judge of a court having such original jurisdiction does not grant the motion of the United States attorney filed pursuant to subsection (c),

the United States attorney may appeal to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, (A) the court may remand the case for a further hearing, (B) with or without additional evidence, change the terms or conditions of release, or (C) in cases in which the United States attorney requested pretrial detention pursuant to sections 23-1322 and 23-1323, order such detention.

(July 29, 1970, 84 Stat. 647, Pub. L. 91-358, title II, § 210(a); July 3, 1992, D.C. Law 9-125, § 5, 39 DCR 2134.)

Section references. — This section is referred to in § 23-1325.

Prior Codifications. — 1981 Ed., § 23-1324.
1973 Ed., § 23-1324.

Legislative history of Law 9-125. — For legislative history of D.C. Law 9-125, see Historical and Statutory Notes following § 23-1321.

CASE NOTES

ANALYSIS

Conditions of detention.
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Conditions of detention.

Conditions of confinement that impede pretrial detainee's preparation for his defense, apart from the fact of confinement itself, or that are so harsh or intolerable as to induce him to plead guilty, or that damage his appearance or mental alertness at trial, are constitutionally suspect and can be justified only by the most compelling necessity. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Construction and application.

Pretrial detention orders are "regulatory," not punitive, measures, which are open to periodic review and modification and, thus, such orders are preliminary and ancillary to prosecution, rather than being separate cases in their own right. D.C. Code 1981, §§ 23-1324, 23-1325(a, d). *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Bail and commitment determinations by trial court are ad hoc matters governed by statutory guidelines. D.C. Code §§ 23-1324(d), 23-1325(b, d). *Ibn-Tamas v. United States*, 368 A.2d 520, 1977 D.C. App. LEXIS 399 (1977).

Dangerousness to community.

Trial court, in making finding of dangerous-

ness under pretrial detention statute, must employ standard of clear and convincing evidence; overruling *De Veau v. United States*, 454 A.2d 1308. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Standard of clear and convincing evidence used to make finding of dangerousness under pretrial detention statute applies to ultimate determination of dangerousness which trial court must make, not to each individual fact on which court relies. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

At hearing held under pretrial detention statute, clear and convincing evidence of defendant's dangerousness can be established by hearsay, and there is no presumption in favor of live testimony at such hearings. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Trial judge may consider hearsay character of Government's evidence in determining whether clear and convincing showing of defendant's dangerousness has been made at pretrial detention hearing; trial judge may require that hearsay evidence be buttressed by otherwise admissible evidence to meet clear and convincing standard. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Financial conditions on release.

Trial court, after reasonably rejecting non-monetary release conditions, was not required to impose money bail which would guarantee defendant's pretrial liberty and, since amount was reasonably related to risk of flight, it was not excessive under Eighth Amendment, even though defendant was unable to post it, and defendant might be lawfully detained for fail-

ure to post the bail. D.C. Code §§ 23-1321 to 23-1323, 23-1321(a), 23-1324(b); U.S. Const. Amend. 8. *Ireland v. United States*, 406 A.2d 1259, 1979 D.C. App. LEXIS 442 (1979).

Pretrial order setting \$10,000 bail for release of accused, who was charged with robbery and weapon assault in case of considerable notoriety and who exhibited self-oriented pattern of life with little or no recognition of social responsibility, and rejecting accused's plan to be placed in multiparty, 24-hour custody of his father, mother and grandmother was affirmed. D.C. Code § 23-1324(b). *Marshall v. United States*, 308 A.2d 766, 1973 D.C. App. LEXIS 336 (1973).

Grounds for grant or denial of release, generally.

Pretrial detention may not violate a detainee's right to bail. *Campbell v. McGruder*, 580 F.2d 521, 1978 U.S. App. LEXIS 11959 (C.A.D.C. 1978).

Trial court had rational basis for decision to detain defendant without bond pending trial, though trial had been continued after mistrial, where defendant had prior criminal history and evidence at previous trial established that he would be danger to the community. D.C. Code 1981, §§ 23-1322(c)(5), 23-1324(b). *Martin v. United States*, 614 A.2d 51, 1992 D.C. App. LEXIS 232 (1992).

Where, in the course of 24-hour review procedure invoked by accused, superior court judge failed to articulate reasons for rejecting accused's request for less onerous release conditions, remand was necessary. D.C. Code 1981, § 23-1321(d, e). *Clotterbuck v. United States*, 459 A.2d 134, 1983 D.C. App. LEXIS 345 (1983).

Superior court criminal rule providing that review of superior court commissioner's determination of conditions of release shall be made by the commissioner who made the determination does not divest judges of the superior court of their plenary power respecting bail. Criminal Rule 117. *Clotterbuck v. United States*, 459 A.2d 134, 1983 D.C. App. LEXIS 345 (1983).

Superior court judge had authority to modify conditions of release originally imposed upon accused by superior court commissioner. Criminal Rule 117. *Clotterbuck v. United States*, 459 A.2d 134, 1983 D.C. App. LEXIS 345 (1983).

Proceedings at pretrial detention hearing, at which Government argued and judge concluded that defendant should be detained without bond pending trial because of risk of danger he presented to community, were sufficient to support order to detain defendant, who was found to have committed murder in front of witnesses "because of a slight, trivial disagreement". D.C. Code 1981, §§ 23-1321, 23-1324(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari

denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Evidence was sufficient to support trial court's denial of release pending imposition of sentence, in proceeding in which trial judge concluded that he was not clearly convinced by evidence that welfare of defendant's young children might not be jeopardized by release of defendant, who was convicted of second-degree murder of husband who died by being shot between the eyes after being knocked to floor by earlier shot. D.C. Code §§ 23-1324(d), 23-1325(b, d). *Ibn-Tamas v. United States*, 368 A.2d 520, 1977 D.C. App. LEXIS 399 (1977).

Where, prior to accused's conviction of second-degree burglary, he had been convicted of taking property without right, housebreaking, disorderly conduct and drunkenness, had been twice convicted of unlawful entry and petit larceny and had been arrested four times on charges of housebreaking, trial court's inability to find that if released accused would not pose danger to community and its refusal to grant bail pending appeal from second degree burglary conviction were not improper. D.C. Code §§ 23-1324(b), 23-1325(c). *Johnson v. United States*, 291 A.2d 697, 1972 D.C. App. LEXIS 399 (1972).

Probable cause.

In making finding as to commission of offense under pretrial detention statute, trial court must continue to employ probable cause standard. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Record and findings.

Court of Appeals, to facilitate review of decision to detain a defendant charged with first-degree murder without bond pending trial, requires written statement or its equivalent, a transcript of trial court's reasoned holding, since without written finding or transcript it is difficult to proceed on expedited basis contemplated by statute. D.C. Code 1981, §§ 23-1324(b), 23-1325(a); Court of Appeals Rules 4, Pt. III, 9(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Where trial court set secured money bonds of \$10,000 each for two defendants charged with murder during perpetration of robbery, but record did not contain full information concerning nature and circumstances of offense and why other conditions of release would not be suitable, proceedings on appeal after defendants' motions for review of bond had been overruled would be remanded for supplementation of record by complete statement by trial

court on those matters or, if trial court deemed it appropriate, entry of new orders respecting pretrial bail. D.C. Code §§ 22-2401, 23-1321, 23-1324; 18 U.S.C. §§ 3146 et seq., 3500. *Bouknight v. United States*, 305 A.2d 524, 1973 D.C. App. LEXIS 291 (1973).

Review.

— Detention as condition precedent to review.

Detention is condition to right of appeal from pretrial bail determination. D.C. Code § 23-1324. *Walls v. United States*, 364 A.2d 154, 1976 D.C. App. LEXIS 364 (1976).

Defendant's appeal from pretrial bail order which required him to obtain full-time employment as condition to his continued relief was improper as he was not under detention and as no extraordinary situation was presented, and thus, would be dismissed. D.C. Code § 23-1324; 18 U.S.C. § 1651. *Walls v. United States*, 364 A.2d 154, 1976 D.C. App. LEXIS 364 (1976).

— In general.

The appellate court defers greatly to the trial court's factual findings regarding whether defendant should be detained while the criminal appeal is pending. *Payne v. United States*, 792 A.2d 237, 2001 D.C. App. LEXIS 261 (2001).

Appellate court's inquiry into whether defendant's appeal raises a substantial legal question, as element for allowing defendant's release while the appeal is pending, is de novo. *Payne v. United States*, 792 A.2d 237, 2001 D.C. App. LEXIS 261 (2001).

Court of Appeals' review of preventive detention order is limited; Court will not substitute its assessment of defendant's dangerousness for trial judge's determination of that essentially factual issue, and will therefore sustain judge's decision so long as it is supported by proceedings below. D.C. Code 1981, §§ 23-1324(b), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Defendant's guilty plea to obstruction of justice rendered moot his prior notice of appeal from pretrial order detaining defendant without bail, and thus, Court of Appeals would not consider that issue; issue involved narrow class of potential detainees, namely, those who attempt to obstruct justice in pending criminal case not of themselves but of another and whom Government seeks to detain solely under provision for obstructing justice. D.C. Code 1981, §§ 22-722(a)(1), 23-1322. *McClain v. United States*, 601 A.2d 80, 1992 D.C. App. LEXIS 6 (1992).

§ 23-1325. Release in first degree murder, second degree murder, and assault with intent to kill while armed cases or after conviction.

(a) A person who is charged with murder in the first degree, murder in the second degree, or assault with intent to kill while armed shall be treated in accordance with the provisions of section 23-1321 unless the judicial officer has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, the person may be ordered detained. In any pretrial detention hearing under the provisions of this section, if the judicial officer finds that there is a substantial probability that the person has committed any of the foregoing offenses while armed with or having readily available a pistol, firearm, or imitation firearm, there shall be a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person or the community.

(b) A person who has been convicted of an offense and is awaiting sentence shall be detained unless the judicial officer finds by clear and convincing evidence that he is not likely to flee or pose a danger to any other person or to the property of others. Upon such finding, the judicial officer shall treat the person in accordance with the provisions of section 23-1321.

(c) A person who has been convicted of an offense and sentenced to a term of confinement or imprisonment and has filed an appeal or a petition for a writ of certiorari shall be detained unless the judicial officer finds by clear and

convincing evidence that (1) the person is not likely to flee or pose a danger to any other person or to the property of others, and (2) the appeal or petition for a writ of certiorari raises a substantial question of law or fact likely to result in a reversal or an order for new trial. Upon such findings, the judicial officer shall treat the person in accordance with the provisions of section 23-1321.

(d) The provisions of section 23-1324 shall apply to persons detained in accordance with this section, except that the finding of the judicial officer that the appeal or petition for writ of certiorari does not raise by clear and convincing evidence a substantial question of law or fact likely to result in a reversal or order for new trial shall receive de novo consideration in the court in which review is sought.

(July 29, 1970, 84 Stat. 647, Pub. L. 91-358, title II, § 210(a); Sept. 17, 1982, D.C. Law 4-152, §§ 4, 5, 29 DCR 3479; July 28, 1989, D.C. Law 8-19, § 2(b), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(b), 37 DCR 24; July 3, 1992, D.C. Law 9-125, § 6, 39 DCR 2134; June 12, 2001, D.C. Law 13-310, § 2(c), 48 DCR 1648.)

Section references. — This section is referred to in § 23-1321.

Prior Codifications. — 1981 Ed., § 23-1325.

1973 Ed., § 23-1325.

Effect of amendments. — D.C. Law 13-310, in the section heading, inserted “, second degree murder,”; and, in subsec. (a), substituted “murder in the first degree, murder in the second degree” in the first sentence, and substituted “substantial probability that the person has committed any of the foregoing offenses” for “substantial probability that the person has committed murder in the first degree”.

Legislative history of Law 4-152. — For legislative history of D.C. Law 4-152, see His-

torical and Statutory Notes following § 23-1321.

Legislative history of Law 8-19. — For legislative history of D.C. Law 8-19, see Historical and Statutory Notes following § 23-1322.

Legislative history of Law 8-120. — For legislative history of D.C. Law 8-120, see Historical and Statutory Notes following § 23-1322.

Legislative history of Law 9-125. — For legislative history of D.C. Law 9-125, see Historical and Statutory Notes following § 23-1321.

Legislative history of Law 13-310. — For Law 13-310, see notes following § 13-1321.

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Construction and application.

Preventive detention statutes restrict the liberty of the citizen, and they must be strictly construed to ensure that defendants are not detained without bond unless the lawmaker has clearly said they should be. D.C. Code 1981, § 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Pretrial detention orders are “regulatory,” not punitive, measures, which are open to periodic review and modification and, thus, such orders are preliminary and ancillary to prosecution, rather than being separate cases in their own right. D.C. Code 1981, §§ 23-1324, 23-1325(a, d). *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Since pretrial detention of person charged with first-degree murder is not to punish a defendant but to prevent flight and protect the community, and since pretrial detention in these cases is reasonably related to legitimate governmental objective, detention pursuant to statute of persons charged with first-degree murder is regulatory and does not constitute punishment. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Since legislature could have taken more severe step of eliminating altogether right to bail in first-degree murder cases, lesser step of allowing bail in first-degree cases except when conditions of release do not assure against flight or harm to community is permissible. D.C. Code 1981, § 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Bail and commitment determinations by trial court are ad hoc matters governed by statutory guidelines. D.C. Code §§ 23-1324(d), 23-1325(b, d). *Ibn-Tamas v. United States*, 368 A.2d 520, 1977 D.C. App. LEXIS 399 (1977).

Subsection (c) does not authorize the release of sentenced defendants pending the resolution of collateral attacks on their convictions. Rather, it authorizes release while a defendant's case is pending appeal. *United States v. Flynn*, 122 WLR 1021 (Super. Ct. 1994).

As of March 31, 1995, Superior Court Criminal Rule 26.2(a) became applicable to pretrial detention hearings held under subsection (a) of this section as the result of an amendment to Superior Court Criminal Rule 46(f)(1). *United States v. Gilbert*, 124 WLR 2061 (Super. Ct. 1996).

Federal legislation.

Federal Bail Reform Act, rather than District of Columbia Code bail provisions, is applicable where a defendant, convicted in federal court of a District of Columbia Code offense, presents a motion for release pending appeal in federal courts of District of Columbia. 18 U.S.C. §§ 3146, 3148, 3772; D.C. Code §§ 22-502, 22-2901, 22-3202, 23-1325, 23-1325(c); Fed.Rules App.Proc. rules 9, 9(c), 18 U.S.C.; Fed.Rules Crim.Proc. rules 46, 46(c), 18 U.S.C. *United States v. Brown*, 483 F.2d 1314, 1973 U.S. App. LEXIS 8492 (C.A.D.C. 1973).

Applications for release of prisoners convicted in the District of Columbia under federal criminal statutes having nationwide application must be considered under the "Bail Reform Act of 1966" and not under the "Court Reform

and Criminal Procedure Act". 18 U.S.C. § 3146 et seq.; D.C. Code § 23-1321 et seq. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

That Congress was exercising its "plenary powers" when it created Court Reform Act was no defense to claim that Act, as applied to defendant, violated his right to equal protection guaranteed by due process clause of Fifth Amendment, in that Bail Reform Act would have been applicable if offense had been committed in any other jurisdiction. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704; D.C. Code § 23-1325; U.S. Const. Amend. 5. *United States v. Thompson*, 452 F.2d 1333, 1971 U.S. App. LEXIS 7720 (C.A.D.C. 1971), writ of certiorari denied by 405 U.S. 998, 92 S. Ct. 1251, 31 L. Ed. 2d 467, 1972 U.S. LEXIS 3366 (1972).

If construed to deny bail to those convicted in District of Columbia under federal criminal statutes having nationwide application, when bail would otherwise be available under Bail Reform Act, District of Columbia Court Reform Act would be violative of equal protection, absent a rational relationship between classification created by Act and any legitimate governmental policy. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code § 23-1325(c); 18 U.S.C. § 3148; U.S. Const. Amend. 5. *United States v. Thompson*, 452 F.2d 1333, 1971 U.S. App. LEXIS 7720 (C.A.D.C. 1971), writ of certiorari denied by 405 U.S. 998, 92 S. Ct. 1251, 31 L. Ed. 2d 467, 1972 U.S. LEXIS 3366 (1972).

Postconviction bail provisions of District of Columbia Court Reform Act apply to persons convicted of purely "local" offenses and do not operate to deny bail to those convicted in District of Columbia under federal criminal statutes having nationwide application, when such bail would otherwise be available under Bail Reform Act. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code § 23-1325(c); 18 U.S.C. § 3148. *United States v. Thompson*, 452 F.2d 1333, 1971 U.S. App. LEXIS 7720 (C.A.D.C. 1971), writ of certiorari denied by 405 U.S. 998, 92 S. Ct. 1251, 31 L. Ed. 2d 467, 1972 U.S. LEXIS 3366 (1972).

Mere fact that residents of District of Columbia lack congressional representation does not justify their use as human guinea pigs, particularly when basic human rights are involved; thus, claim that Congress intended Court Reform Act to serve as an experiment and that, if operated successfully in District of Columbia, it would subsequently be enacted for all federal jurisdictions did not operate to validate Act, in face of substantially different provisions in Bail Reform Act. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704; D.C. Code § 23-1325(c);

18 U.S.C. § 3148. *United States v. Thompson*, 452 F.2d 1333, 1971 U.S. App. LEXIS 7720 (C.A.D.C. 1971), writ of certiorari denied by 405 U.S. 998, 92 S. Ct. 1251, 31 L. Ed. 2d 467, 1972 U.S. LEXIS 3366 (1972).

Postconviction release.

— Findings, postconviction release.

As trial judge's response to requirement of Federal Rule of Appellate Procedure that district judges, with respect to applications for release pending appeal, supply their reasons for dispositions other than unconditional release, was little more than a recitation of certain of the procedural events during the prosecution and an expression of opinion that release conditions would not suitably safeguard against flight or dangerousness, as no facts which might augur risks of that magnitude were identified, and as no reasons why an imposition of conditions might not sufficiently minimize them was offered, the trial judge's ruling could not be intelligently reviewed, necessitating remand for suitable amplification of the required statement of reasons. 18 U.S.C. § 3146 et seq.; Fed.Rules App.Proc. rule 9(b), 18 U.S.C. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

Notwithstanding whether Court Reform Act or Bail Reform Act was applicable to criminal offenses committed in District of Columbia, where district court's order denying bail pending appeal did no more than repeat statutory standards contained in Court Reform Act and stated that defendant had failed to meet them, whereas federal rules of appellate procedure clearly stated that district court was to give reasons for action taken if it refused release pending appeal, remand for further findings was necessary. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code § 23-1325(c); 18 U.S.C. § 3148; Fed.Rules App.Proc. rule 9(b), 18 U.S.C. *United States v. Thompson*, 452 F.2d 1333, 1971 U.S. App. LEXIS 7720 (C.A.D.C. 1971), writ of certiorari denied by 405 U.S. 998, 92 S. Ct. 1251, 31 L. Ed. 2d 467, 1972 U.S. LEXIS 3366 (1972).

— In general.

Bail Reform Act reflects a policy strongly favoring posttrial as well as pretrial release, but both its structure and its interpretation underscore the delicacy of the determinations which must precede any ruling on that score. 18 U.S.C. § 3146 et seq. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

Bail Reform Act requires release of a convicted defendant pending an appeal unless the appeal is frivolous or a procrastinating maneuver, or unless there is reason to believe that no

conditions of release will reasonably assure that he will not flee or pose a danger to another or to the community. 18 U.S.C. §§ 3146 et seq., 3148. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

The circumstances to be considered in determining whether a convicted defendant should be released pending appeal include the nature and circumstances of the offense, weight of the evidence against the accused, his family ties, employment status, financial resources, character and mental condition, length of his residence in the community, any prior criminal record and any flight or failures to appear in court proceedings. 18 U.S.C. § 3146(b); Fed.Rules Crim.Proc. rule 46(c), 18 U.S.C. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

In considering whether a convicted defendant should be released pending an appeal, a conclusion as to whether the appeal is frivolous or taken for delay demands a careful exploration into its potentialities on the merits and the seriousness of its underlying purpose; save for situations where the unlikelihood of flight or community danger is relatively plain, the judicial decision hangs on the availability and capability of conditions to reduce those risks to a level of reasonable safety. 18 U.S.C. § 3146(b); Fed.Rules Crim.Proc. rule 46(c), 18 U.S.C. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

An application for release pending appeal is a function historically committed to trial judges; moreover, the trial court is the superior tribunal for the kind of information-gathering which a sound foundation for a bail ruling almost inevitably requires. 18 U.S.C. § 3146 et seq. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

Evidence was sufficient to support trial court's denial of release pending imposition of sentence, in proceeding in which trial judge concluded that he was not clearly convinced by evidence that welfare of defendant's young children might not be jeopardized by release of defendant, who was convicted of second-degree murder of husband who died by being shot between the eyes after being knocked to floor by earlier shot. D.C. Code §§ 23-1324(d), 23-1325(b, d). *Ibn-Tamas v. United States*, 368 A.2d 520, 1977 D.C. App. LEXIS 399 (1977).

In view of defendant's past record of convictions, character, and fact of conviction for inducing a female to engage in prostitution, compelling a female by threats and duress to live a life of prostitution against her will, assault with a dangerous weapon, and mayhem and malicious disfigurement, order setting postconviction bail was unsupported respecting necessary finding as to nondangerousness, and defendant should have been ordered detained pending appeal and should have remained in

custody, not because he lacked means to make bail, but for reason that his release would present danger to community. D.C. Code §§ 23-1321(d, e), 23-1322(b)(3), 23-1323, 23-1325(b, c). *Villines v. United States*, 312 A.2d 304, 1973 D.C. App. LEXIS 417 (1973).

Where, prior to accused's conviction of second-degree burglary, he had been convicted of taking property without right, housebreaking, disorderly conduct and drunkenness, had been twice convicted of unlawful entry and petit larceny and had been arrested four times on charges of housebreaking, trial court's inability to find that if released accused would not pose danger to community and its refusal to grant bail pending appeal from second degree burglary conviction were not improper. D.C. Code §§ 23-1324(b), 23-1325(c). *Johnson v. United States*, 291 A.2d 697, 1972 D.C. App. LEXIS 399 (1972).

There is no constitutional right to an appeal from a conviction or to bail on appeal. D.C. Code § 23-1325(c). *Johnson v. United States*, 291 A.2d 697, 1972 D.C. App. LEXIS 399 (1972).

Requirement that before granting bail pending appeal, trial court must find that release on bail will not pose danger to other persons or to property of others is not unreasonable. D.C. Code § 23-1325(c); 18 U.S.C. § 3148. *Johnson v. United States*, 291 A.2d 697, 1972 D.C. App. LEXIS 399 (1972).

— Likelihood of reversal, postconviction release.

Since defendant raised substantial issues on appeal he had a right to be released, assuming he could show that he was unlikely to leave the jurisdiction or pose danger to others. D.C. Code § 23-1325(c). *United States v. Sarvis*, 523 F.2d 1177, 1975 U.S. App. LEXIS 11825 (C.A.D.C. 1975).

Defendants, who were convicted of second-degree murder and carrying a deadly weapon and as to whom trial judge was unable to find that they were not likely to flee or pose a danger though he did not discuss substantiality of the appeal, would not be granted bail pending appeal under District of Columbia Code provisions. D.C. Code § 23-1325(c). *United States v. Smith*, 476 F.2d 884, 1972 U.S. App. LEXIS 6624 (C.A.D.C. 1972).

Defendant, who was convicted of manslaughter and as to whom trial judge could not find a likelihood of reversal though he did not consider risk of flight or danger, would not be granted release under District of Columbia Code provisions on nonfinancial conditions pending appeal. D.C. Code § 23-1325(c). *United States v. Smith*, 476 F.2d 884, 1972 U.S. App. LEXIS 6624 (C.A.D.C. 1972).

Pretrial detention.

— Dangerousness to community, pretrial detention.

"Substantial probability" that defendant

committed first-degree murder while armed, from which presumption of dangerousness arises which would subject defendant to preventive detention, is a standard higher than probable cause. D.C. Code 1981, § 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

If judge finds by a substantial probability that a defendant has committed first-degree murder while armed, defendant is presumed to be dangerous, and subject to preventive detention, even if his prior record is clean and if no other showing of dangerousness is made. D.C. Code 1981, § 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Defendant's past conduct is important evidence, perhaps the most important, in predicting his probable future conduct, with respect to determination of whether preventive detention is warranted in an assault with intent to kill while armed (AWIKWA) case; therefore, substantial weight must be accorded to presence in, or absence from, the defendant's record of convictions of dangerous crimes or a history of violent conduct. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

In most, if not all, cases, proof of (1) probable cause that defendant committed assault with intent to kill while armed (AWIKWA) and (2) facts and circumstances of charged offense will be insufficient, without more, to establish by clear and convincing evidence that a defendant is dangerous and preventively detainable. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Defendant can never be presumed to be dangerous, as would subject defendant to preventive detention, solely on basis of finding of probable cause that he has committed assault with intent to kill while armed (AWIKWA) or first-degree murder while armed (FDMWA). D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Defendant's dangerousness to other persons and community, for purposes of pretrial detention order, was established by evidence that defendant allegedly shot and killed victim while committing attempted armed robbery, and that at time of his apprehension defendant was engaged in fight with another man, dropped handgun to ground, and attempted to flee on foot. D.C. Code 1981, § 23-1325(a). *Scott v. United States*, 633 A.2d 72, 1993 D.C. App. LEXIS 281 (1993).

Trial court had rational basis for decision to detain defendant without bond pending trial, though trial had been continued after mistrial, where defendant had prior criminal history and

evidence at previous trial established that he would be danger to the community. D.C. Code 1981, §§ 23-1322(c)(5), 23-1324(b). *Martin v. United States*, 614 A.2d 51, 1992 D.C. App. LEXIS 232 (1992).

Trial judge may consider hearsay character of Government's evidence in determining whether clear and convincing showing of defendant's dangerousness has been made at pretrial detention hearing; trial judge may require that hearsay evidence be buttressed by otherwise admissible evidence to meet clear and convincing standard. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Trial court, in making finding of dangerousness under pretrial detention statute, must employ standard of clear and convincing evidence; overruling *De Veau v. United States*, 454 A.2d 1308. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Standard of clear and convincing evidence used to make finding of dangerousness under pretrial detention statute applies to ultimate determination of dangerousness which trial court must make, not to each individual fact on which court relies. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

At hearing held under pretrial detention statute, clear and convincing evidence of defendant's dangerousness can be established by hearsay, and there is no presumption in favor of live testimony at such hearings. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Proceedings at pretrial detention hearing, at which Government argued and judge concluded that defendant should be detained without bond pending trial because of risk of danger he presented to community, were sufficient to support order to detain defendant, who was found to have committed murder in front of witnesses "because of a slight, trivial disagreement". D.C. Code 1981, §§ 23-1321, 23-1324(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Defendants are constitutionally entitled to demand proof by clear and convincing evidence that they are so dangerous that no combination of conditions of release will serve to adequately protect the community and that they must be deprived of their liberty before their trial by jury. *United States v. Cooper*, 115 WLR 1741 (Super. Ct. 1987).

Where there was probable cause to believe that defendant committed the offense of first degree murder while armed and the government established defendant's dangerousness by

clear and convincing evidence, defendant could be detained without bond pending his trial. *United States v. Lyons*, 116 WLR 941 (Super. Ct. 1988).

— Findings, pretrial detention.

Court of Appeals, to facilitate review of decision to detain a defendant charged with first-degree murder without bond pending trial, requires written statement or its equivalent, a transcript of trial court's reasoned holding, since without written finding or transcript it is difficult to proceed on expedited basis contemplated by statute. D.C. Code 1981, §§ 23-1324(b), 23-1325(a); Court of Appeals Rules 4, Pt. III, 9(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

— Hearing required, pretrial detention.

Since determination that person charged with first-degree murder should be detained because conditions of release will not reasonably assure that person will not flee or pose danger to community could result in significant pretrial restraint of liberty, some type of hearing is required to insure fair and reliable determination but there is no constitutional right to formal evidentiary hearing and hearing contemplated is informal one in which presiding judge entertains representations from counsel and bail agency. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

— In general.

In absence of statutory presumption based on finding of substantial probability, government's burden to prove by clear and convincing evidence that defendant is properly subject to preventive detention cannot be satisfied simply by reference to known facts regarding crime of which defendant has been accused; court's calculus must include not only the nature and circumstances of offense charged, but also, *inter alia*, weight of evidence against defendant, defendant's history and criminal record, if any, defendant's community ties and resources, whether defendant was on parole, probation, or release pending trial at time of charged offense, and danger that defendant's release would pose to any person in community. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Preventive detention of defendant was not warranted, in an assault with intent to kill while armed (AWIKWA) case; though alleged attempted assassination was chilling, in that

man shot was under a car, weight of evidence against defendant was marginal, defendant had no criminal record with exception of single expunged conviction, there was no evidence of recent drug or alcohol involvement, defendant apparently had unusually strong community support and ties, and defendant was not on probation, parole, or other supervised release at time of charged offense. D.C. Code 1981, §§ 22-503, 22-3202, 23-1322(e), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Pretrial detention statute, even for those suspected of armed murder, may not be used either as punitive measure or to incarcerate in lieu of valid conviction based on verdict and sentence. D.C. Code 1981 § 23-1325(a). *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Where information showed that defendant was charged with first-degree murder of her daughter and did not deny committing offense, and where according to entry in her diary her daughter's presence was only thing that kept her from leaving District of Columbia, and where even if defendant, who alleged insanity defense, was not guilty by reason of insanity she faced possible indefinite hospitalization, there was sufficient "reason to believe" that conditions of release would not reasonably assure that defendant would not flee or pose danger to community and thus there was sufficient support for order detaining defendant without bond. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Proceedings at pretrial detention hearing, including defendant's lack of employment, brutality of shooting and pending charge for possession of a dangerous weapon, supported judge's finding that no conditions for release could guarantee against defendant's flight or danger that he presented to community and thus supported defendant's pretrial detention without bond. D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Statute, which provides that person who is charged with first-degree murder may be ordered detained if conditions of release will not reasonably assure that person will not flee or pose danger to any other person or community, did not violate defendants' rights to confrontation and compulsory process. D.C. Code 1981, §§ 23-1321(b), 23-1325(a); U.S.C. Const. Amends. 4, 5. *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513

(1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

— Probable cause, pretrial detention.

Federal Bail Reform Act, like state pretrial detention statute, requires government to demonstrate probable cause to believe that charged crime has been committed by arrestee. 18 U.S.C. § 3141 et seq.; D.C. Code 1981, § 23-1325(a). *Scott v. United States*, 633 A.2d 72, 1993 D.C. App. LEXIS 281 (1993).

Grand jury indictment of defendant was sufficient to establish probable cause to believe that defendant committed predicate felony of robbing or attempting to rob victim so as to justify pretrial detention order. D.C. Code 1981, § 23-1325(a). *Scott v. United States*, 633 A.2d 72, 1993 D.C. App. LEXIS 281 (1993).

Detention under pretrial detention statute is permitted if trial court finds probable cause to believe that person committed offense charged, and by clear and convincing evidence that no one or more conditions of release will reasonably assure that person will not flee or pose danger to any other person or community. D.C. Code 1981, § 23-1325(a). *Scott v. United States*, 633 A.2d 72, 1993 D.C. App. LEXIS 281 (1993).

In making finding as to commission of offense under pretrial detention statute, trial court must continue to employ probable cause standard. D.C. Code 1981, § 23-1325(a). *Lynch v. United States*, 557 A.2d 580, 1989 D.C. App. LEXIS 54 (1989).

Statute which provides that person who is charged with first-degree murder may be ordered detained when no conditions of release will reasonably assure that person will not flee or pose danger to community requires "reason to believe" that pretrial detention is necessary, the equivalent of probable cause, and that is sufficient. D.C. Code 1981, § 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

— Risk of flight, pretrial detention.

Trial court is required to apply the clear and convincing evidence standard to a pretrial detention based on risk of flight. D.C. Code 1981, § 23-1325(a). *Kleinbart v. United States*, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Upon challenge by a defendant who is subjected to pretrial detention on basis of risk of flight, trial court, in applying clear and convincing evidence standard, must carefully consider defendant's rebuttal evidence that he is not a flight risk and that there are in fact conditions of release which could insure his future appearance in court. D.C. Code 1981, § 23-1325(a).

Kleinbart v. United States, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Trial court on remand of case in which it imposed pretrial detention based on risk of flight was required to apply clear and convincing evidence standard, and to carefully consider the defendant's rebuttal evidence that he was not a flight risk. D.C. Code 1981, § 23-1325(a). Kleinbart v. United States, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

— Time limitations on pretrial detention.

There are no time limitations on period of pretrial detention of person charged with assault with intent to kill while armed who has been found to be at risk of flight or to be danger to community; statute providing for such pretrial detention plainly and unambiguously did not include time limitations. D.C. Code 1981, § 23-1325(a). McPherson v. United States, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

Retroactivity.

Since amendment to statute permitting pretrial detention of person charged with first-degree murder when conditions of release will not reasonably assure that person will not flee or pose danger to community does not impose or increase punishment and since amendment does not make formally legal conduct a crime or change ultimate facts necessary to establish guilt, application of statute to defendants, who were charged before amendment became effective, did not violate *ex post facto* clause. D.C. Code 1981, § 23-1325(a); U.S. Const. Art. 1, § 10, cl. 1. *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Since there is no constitutional right to bail and since application of new bail law can affect pretrial liberty only after its effective date, application of amended statute, which provides that person charged with first-degree murder may not be released when risk of flight or danger is believed to exist, to defendants, who were charged before statute became effective, did not violate statutory principle against retroactive application. D.C. Code 1981, § 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Review.

— In general.

Twin specifications of Federal Rule of Appellate Procedure, namely, that applications for release pending appeal be first adjudicated in district courts and that district judges supply their reasons for dispositions other than uncon-

ditional release, constitute a mandate that circuit judges give those reasons respectful consideration in arriving at their own decision on bail. Fed.Rules App.Proc. rule 9(b), 18 U.S.C. United States v. Stanley, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

Preventive detention implicates basic constitutional liberties, and thus, especially careful review by Court of Appeals is warranted with respect to prevention detention order. D.C. Code 1981, § 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Court may grant summary affirmance of pretrial detention order *sua sponte*, though government's response to defendant's motion was captioned as opposition and not as motion for summary affirmance; relief that government sought was affirmance. *Martin v. United States*, 614 A.2d 51, 1992 D.C. App. LEXIS 232 (1992).

Previous summary affirmance of defendant's pretrial detention was not the law of the case, and, thus, Court of Appeals was not precluded as merit division by motion division's summary affirmance from reviewing question whether pretrial detention based on risk of flight must be supported by clear and convincing evidence; despite implicit rejection of clear and convincing evidence standard, issue was not thoroughly aired and definitively resolved on summary affirmance of pretrial detention, in that motions division's ruling went beyond motions presented by parties, inasmuch as government did not move for summary affirmance. D.C. Code 1981, § 23-1325(a). Kleinbart v. United States, 604 A.2d 861, 1992 D.C. App. LEXIS 63 (1992).

Appellate court would not consider denial of murder defendant's motion for release from pretrial detention where defendant failed to appeal from first denial of motion and did not press for early trial date upon denial of appealed from motion; assertion of rights required due diligence. D.C. Code 1981, § 23-1325. *Montague v. United States*, 522 A.2d 866, 1987 D.C. App. LEXIS 313 (1987).

When articulated circumstances exist which rationally may lead to denial of release under statute governing release after conviction, order denying release must be affirmed. D.C. Code § 23-1325(b). *Ibn-Tamas v. United States*, 368 A.2d 520, 1977 D.C. App. LEXIS 399 (1977).

— Mootness, review.

Dismissal of charge of assault with intent to kill while armed (AWIKWA) against defendant without prejudice approximately seven weeks after Court of Appeals issued order summarily reversing defendant's preventive detention and stating that opinion would follow did not render appeal moot, where, at time of Court's ruling,

defendant was in detention, present opinion set forth legal basis for that ruling, and issue was capable of repetition but evaded review. D.C. Code 1981, §§ 22-503, 22-3202, 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Defendant's guilty plea to obstruction of justice rendered moot his prior notice of appeal from pretrial order detaining defendant without bail, and thus, Court of Appeals would not consider that issue; issue involved narrow class of potential detainees, namely, those who attempt to obstruct justice in pending criminal case not of themselves but of another and whom Government seeks to detain solely under provision for obstructing justice. D.C. Code 1981, §§ 22-722(a)(1), 23-1322. *McClain v. United States*, 601 A.2d 80, 1992 D.C. App. LEXIS 6 (1992).

— Scope of review.

Function of Court of Appeals on a bail application pending appeal is not merely appellate but includes the duty to make an independent determination of all relevant factors; but this does not mean that the court is free to ignore the reasons assigned by the trial judge for his action or, except where the ruling properly to be made on release is very clear, to adjudicate the application when the trial judge has neglected a statement of reasons. 18 U.S.C. § 3146 et seq.; Fed.Rules App.Proc. rule 9(b), 18 U.S.C. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

The appellate court defers greatly to the trial court's factual findings regarding whether defendant should be detained while the criminal appeal is pending. *Payne v. United States*, 792 A.2d 237, 2001 D.C. App. LEXIS 261 (2001).

Appellate court's inquiry into whether defendant's appeal raises a substantial legal question, as element for allowing defendant's release while the appeal is pending, is de novo. *Payne v. United States*, 792 A.2d 237, 2001 D.C. App. LEXIS 261 (2001).

Question of whether, in an assault with intent to kill while armed (AWIKWA) case, a preventive detention order could rest solely on a probable cause finding plus circumstances of the charged crime was principally one of law, and Court of Appeals would review de novo the trial judge's disposition of it. D.C. Code 1981, §§ 22-503, 22-3202, 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

Court of Appeals' review of preventive detention order is limited; Court will not substitute its assessment of defendant's dangerousness for trial judge's determination of that essentially factual issue, and will therefore sustain judge's decision so long as it is supported by proceedings below. D.C. Code 1981, §§ 23-

1324(b), 23-1325(a). *Pope v. United States*, 739 A.2d 819, 1999 D.C. App. LEXIS 242 (1999).

In reviewing trial court dispositions of defendant in a postconviction, presentence status, Court of Appeals' scope of review is limited and Court must affirm if supported by proceedings below; great deference must be given to trial judge's articulated observations of demeanor and conclusions drawn from exposure to trial and presentence report. D.C. Code §§ 23-1324(d), 23-1325(b, d). *Ibn-Tamas v. United States*, 368 A.2d 520, 1977 D.C. App. LEXIS 399 (1977).

Revocation of release.

Liberty of a defendant who has been or is entitled to release may nevertheless be restricted after an indictment if, following a de novo hearing, the court finds that the defendant would either fail to appear at future court proceedings or could pose a danger to the community if released. D.C. Code 1981, §§ 23-102, 23-1321, 23-1325(a). *Price v. United States*, 476 A.2d 644, 1984 D.C. App. LEXIS 386 (1984).

Validity.

There may well be times when state is justified in denying bail pending appeal, but when different standards are applied to bail applications based on an apparently arbitrary classification, courts are not obliged to accept hypothetical or unfounded excuses for distinction drawn. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code § 23-1325(c); 18 U.S.C. § 3148. *United States v. Thompson*, 452 F.2d 1333, 1971 U.S. App. LEXIS 7720 (C.A.D.C. 1971), writ of certiorari denied by 405 U.S. 998, 92 S. Ct. 1251, 31 L. Ed. 2d 467, 1972 U.S. LEXIS 3366 (1972).

Statute providing that person charged with assault with intent to kill while armed may be held in pretrial detention if found to pose danger or risk of flight was not facially invalid under the due process clause. U.S.C. Const.Amend. 5; D.C. Code 1981, § 23-1325(a). *McPherson v. United States*, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

Statute providing that person charged with assault with intent to kill while armed may be held in pretrial detention if found to pose a danger or if risk of flight is presented was not facially invalid under the equal protection clause; government had a compelling interest for detaining those accused of drive-by shootings who pose a danger to community or a risk of flight, until trial, so long as detention continued to be of regulatory rather than punitive nature. U.S. Const.Amend. 5; D.C. Code 1981, § 23-1325(a). *McPherson v. United States*, 692 A.2d 1342, 1997 D.C. App. LEXIS 68 (1997).

Pretrial detention of defendants charged with first-degree murder pursuant to statute which provides for detainment if risk of flight or danger is believed to exist did not violate substantive due process in light of historical practice of denying bail to defendants charged with first-degree murder. D.C. Code 1981, § 23-1325(a); U.S. Const. Amend. 5. *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Statute which provides that person charged with first-degree murder may be released unless judicial officer has reason to believe that no conditions of release will reasonably assure that person will not flee or pose danger to community, which incorporates standards to determine whether to release defendant prior to trial, and which applies only to constitutionally regulable conduct, is not void for vagueness on theory that it provides no standard for judge to determine whether person would "pose a danger to . . . the community" nor is it overbroad.

D.C. Code 1981, §§ 23-1321(b), 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

Since defendants did not have constitutional right to bail, strict scrutiny was not required of statute which provides that persons who are charged with first-degree murder may be released except when judicial officer has reason to believe that no conditions of release will reasonably assure that persons will not flee or pose danger to community, and thus, since legislature had rational basis upon which to treat persons charged with first-degree murder differently from persons charged with other crimes, statute did not deprive defendants, who were detained pursuant to statute, of equal protection. D.C. Code 1981, § 23-1325(a). *De Veau v. United States*, 454 A.2d 1308, 1982 D.C. App. LEXIS 513 (1982), writ of certiorari denied by 460 U.S. 1087, 103 S. Ct. 1781, 76 L. Ed. 2d 351, 1983 U.S. LEXIS 3955, 51 U.S.L.W. 3757 (1983).

§ 23-1326. Release of material witnesses.

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 23-1321. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

(July 29, 1970, 84 Stat. 648, Pub. L. 91-358, title II, § 210(a); Apr. 30, 1988, D.C. Law 7-104, § 7(h), 35 DCR 147.)

Prior Codifications. — 1981 Ed., § 23-1326.

1973 Ed., § 23-1326.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

§ 23-1327. Penalties for failure to appear.

(a) Whoever, having been released under this title prior to the commencement of his sentence, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari

prior to commencement of his sentence after conviction of any offense, be fined not more than \$5,000 and imprisoned not less than one year and not more than five years, (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor and imprisoned for not less than ninety days and not more than 180 days, or (3) if he was released for appearance as a material witness, be fined not more than \$1,000 or imprisoned for not more than 180 days, or both.

(b) Any failure to appear after notice of the appearance date shall be prima facie evidence that such failure to appear is wilful. Whether the person was warned when released of the penalties for failure to appear shall be a factor in determining whether such failure to appear was wilful, but the giving of such warning shall not be a prerequisite to conviction under this section.

(c) The trier of facts may convict under this section even if the defendant has not received actual notice of the appearance date if (1) reasonable efforts to notify the defendant have been made, and (2) the defendant, by his own actions, has frustrated the receipt of actual notice.

(d) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

(July 29, 1970, 84 Stat. 648, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(b), (c), 41 DCR 2608.)

Section references. — This section is referred to in §§ 23-1303 and 23-1322.

Prior Codifications. — 1981 Ed., § 23-1327.

1973 Ed., § 23-1327.

Emergency legislation. — For temporary amendment of section, see § 101(b) and (c) of

the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 23-1321.

CASE NOTES

ANALYSIS

Admissibility of evidence.

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Construction and application.

Contempt.

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—Ignorance or mistake, intent.

—In general.

—Intoxication, intent.

—Wilfulness, intent.

Joint or separate trial of charges.

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Notice of penalties for nonappearance.

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Review.

Admissibility of evidence.

Trial court was not required to advise defendant who testified at trial of obvious effect of

testifying, i.e., that his testimony and demeanor could be considered by fact-finder and potentially held against him, in prosecution for violation of Bail Reform Act to prove defendant's failure to appear at status hearing on separate criminal charge. *Jackson v. United States*, 924 A.2d 1016, 2007 D.C. App. LEXIS 256 (2007).

Certified copies of docket entries and notice to return to court contained in court records, offered by state in prosecution for violation of Bail Reform Act to prove defendant's failure to appear at status hearing on separate criminal charge, were not "testimonial," and, thus, admission of documents absent affording defendant prior opportunity to cross-examine court clerk did not violate Confrontation Clause; primary purpose for which documents were created was not to document facts or events for future prosecution, but, rather, to satisfy administrative functions necessary to operation of the court, documents did not result from investigation, and courtroom clerks were not law

enforcement personnel. *Jackson v. United States*, 924 A.2d 1016, 2007 D.C. App. LEXIS 256 (2007).

Bench warrant issued after defendant failed to appear in court for status hearing on separate criminal charge, offered by state in prosecution for violation of Bail Reform Act, was not "testimonial," and, thus, admission of warrant presented no Confrontation Clause concern; rather than establishing past facts underlying criminal charge for purposes of future prosecution, warrant indicated only what defendant has been charged with, and warrant's primary purpose, plainly expressed through its text, was to notify law enforcement officials that they had both the power and responsibility to arrest defendant and bring him forthwith before the court. *Jackson v. United States*, 924 A.2d 1016, 2007 D.C. App. LEXIS 256 (2007).

Preventing defendant from explaining that his failure to appear in court for status hearing resulted from his fear of person who sold crack cocaine, not from consciousness of guilt, was abuse of discretion in prosecution for distributing crack cocaine and violation of Bail Reform Act (BRA); although fear of coming to court was not defense to BRA violation, reasonable jurors could have interpreted defendant's explanation to encompass fear in context of both BRA and distribution charge. D.C. Code 1981, §§ 23-1327, 33-541(a)(1). *Price v. United States*, 697 A.2d 808, 1997 D.C. App. LEXIS 155 (1997).

Defendant's testimony that his failure to appear in court for status hearing resulted from his fear of individual who sold crack cocaine to police fell within state of mind exception to hearsay rule in prosecution for distributing cocaine and violation of Bail Reform Act (BRA). D.C. Code 1981, §§ 23-1327, 33-541(a)(1). *Price v. United States*, 697 A.2d 808, 1997 D.C. App. LEXIS 155 (1997).

Testimony of deputy courtroom clerk on general practice when judges change courtrooms lacked foundation that clerk had basis for knowing general practice and was inadmissible in prosecution for failure to appear; nothing indicated what level of clerk's experience was, how she came to know what other courtroom clerks did, and whether this was routine practice of courtroom clerks. D.C. Code 1981, § 23-1327(a); Fed.Rules Evid.Rules 406, 602, 18 U.S.C. Smith v. United States, 583 A.2d 975, 1990 D.C. App. LEXIS 316 (1990).

Admission of deputy courtroom clerk's testimony without foundation about general practice when judges change courtrooms required reversal in prosecution for failure to appear. D.C. Code 1981, § 23-1327(a); Fed.Rules Evid.Rules 406, 602, 18 U.S.C. Smith v. United States, 583 A.2d 975, 1990 D.C. App. LEXIS 316 (1990).

Where proffered testimony was not offered to show truth of matters asserted therein, but,

rather, was offered to show that certain words had been said to defendant which could give rise to good faith and reasonable belief that his case had been dismissed, a story which, if believed by jury, would constitute valid defense to charge of "willfully" failing to appear, error occurred in excluding such testimony as inadmissible hearsay, but such error was harmless in light of defendant's mother's testimony relating what defendant allegedly had been told by person operating computer terminal. D.C. Code § 23-1327. *Jenkins v. United States*, 415 A.2d 545, 1980 D.C. App. LEXIS 301 (1980).

Arguments of counsel.

Prosecutor, in stating that "defendant told you he chose not to come to court that day," made improper argument to jury based on facts not in evidence or even reasonably inferable from evidence presented, in prosecution in which defendant was convicted of willfully failing to appear in court; during cross-examination of defendant, prosecutor asked defendant if he chose not to come into court, and defendant answered that it was not a matter of choosing, but rather, that he was unable to come in that day. *Fearwell v. United States*, 886 A.2d 95, 2005 D.C. App. LEXIS 556 (2005).

Construction and application.

Evidence was sufficient to support conviction for wilful failure to appear in court as required by defendant's release on his personal recognizance. 18 U.S.C. §§ 3146, 3150. *United States v. Moss*, 438 F.2d 147, 1970 U.S. App. LEXIS 6165 (C.A.D.C. 1970).

To convict a person under the failure to appear section of the bail reform statute, trier of fact must find: (1) that defendant was released pending trial or sentencing; (2) that he was required to appear in court on a specified date or at a specified time; (3) that he failed to appear; and (4) that his failure was willful. *Fearwell v. United States*, 886 A.2d 95, 2005 D.C. App. LEXIS 556 (2005).

Defendant's nationality and his status as an illegal alien were not impermissibly considered as a basis for enhancing defendant's sentence on his guilty pleas to credit card fraud, receiving stolen property, and one count of failure to appear in court; court imposed a heavy sentence not because of defendant's ethnicity or alien status, but because of his unlawful conduct, particularly his conduct in the five and one-half years since he entered his guilty pleas, his flight from justice, and his refusal to accept responsibility for his actions. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Sentencing court did not exceed its authority by telling prosecutor to take all necessary steps to effect defendant's deportation after he had served his sentence on his guilty pleas to credit

card fraud, receiving stolen property, and one count of failure to appear in court; the court simply reminded prosecutor of an obligation that he already knew about, it was not an "order" from the court to assure his deportation, it was not part of his sentence, and it appeared that the Immigration and Naturalization Service (INS) had already lodged a detainer against defendant before he was sentenced. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

As one element of charge of violation of Bail Reform Act, Government was required to prove that defendant failed to appear in court as required. D.C. Code 1981, § 23-1327. *Macklin v. United States*, 733 A.2d 962, 1999 D.C. App. LEXIS 149 (1999).

Evidence was insufficient to convict defendant of violating Bail Reform Act; while trial court took judicial notice of fact that defendant was required to be in court on given date, there was no evidence presented to establish defendant failed to appear on that date. D.C. Code 1981, § 23-1327. *Macklin v. United States*, 733 A.2d 962, 1999 D.C. App. LEXIS 149 (1999).

To convict individual under Bail Reform Act for failure to appear in court, trier of fact must find that defendant was released pending trial or sentencing, that he was required to appear in court on specified date or at specified time, that he failed to appear, and that his failure was willful. D.C. Code 1981, § 23-1327(a). *Foster v. United States*, 699 A.2d 1113, 1997 D.C. App. LEXIS 168 (1997).

To convict individual of violation of Bail Reform Act, trier of fact must find that defendant was released pending trial or sentencing, that she was required to appear in court on specified date or at specified time, that she failed to appear, and that her failure was willful. D.C. Code 1981, § 23-1327(a). *Cooper v. United States*, 680 A.2d 1370, 1996 D.C. App. LEXIS 141 (1996).

To obtain conviction for crime of failure to appear, government must prove four elements: that appellant was released prior to trial, that he or she was required to appear in court on specific date, that he or she failed to appear and that his or her failure was willful. D.C. Code 1981, § 23-1327. *Bolan v. United States*, 587 A.2d 458, 1991 D.C. App. LEXIS 50 (1991).

Evidence, which established that defendant was informed of his trial date on charge of unlawfully possessing a narcotic drug, that he failed to appear at trial and that he used an alias in an unsuccessful attempt to avoid being arrested on a bench warrant some three months after his failure to appear, was sufficient to support defendant's conviction for willful failure to appear for trial. D.C. Code § 23-1327(a). *Burgos v. United States*, 404 A.2d 532, 1979 D.C. App. LEXIS 375 (1979).

Evidence that defendant, who was not a newcomer to the criminal justice system, knew that he was supposed to appear on date certain at specified time and did not do so was sufficient to support his conviction of willful failure to appear in court as required while on pretrial release. D.C. Code § 23-1327(b). *Raymond v. United States*, 396 A.2d 975, 1979 D.C. App. LEXIS 283 (1979).

Contempt.

Evidence, based on arresting officer's identification of defendant as suspect he arrested, coupled with signature of person purporting to be defendant on release order signed after arraignment proceeding, was sufficient for a reasonable jury to find that defendant was present when court ordered him to reappear at a later date, and thus was sufficient to convict defendant of criminal contempt when he arrived in court one hour and fifty minutes late for second day of his trial. D.C. Code 1981, § 23-1327. *Williams v. United States*, 576 A.2d 1339, 1990 D.C. App. LEXIS 144 (1990).

Finding that defendant was in contempt for failing to appear at the time his case was called was supported by his admission that he did not appear because he had gone to his hometown for his grandfather's funeral. *Swisher v. United States*, 572 A.2d 85, 1990 D.C. App. LEXIS 61 (1990).

Although it is mandatory that accused be present at beginning stage of trial, this does not mean that trial court is helpless when a defendant does not appear at beginning of trial as directed; proper exercise of court's contempt power, after appropriate factual inquiry, appears to be a prescribed method of punishing other defendant who fails to appear for trial and, in addition, one who willfully fails to appear as required is subject to prosecution. D.C. Code SCR, Criminal Rule 43; D.C. Code §§ 11-944, 23-1327, 23-1330; 18 U.S.C. § 402. *Campbell v. United States*, 295 A.2d 498, 1972 D.C. App. LEXIS 230 (1972).

The fact that a defendant has been convicted of criminal contempt and has served a jail sentence (for violating a condition of pretrial release by failing to appear as required) compels the subsequent dismissal of a prosecution charging a violation of this section filed 3 days prior to the contempt finding and based on the same conduct. *United States v. Jackson*, 113 WLR 2437 (Super. Ct.).

Double jeopardy.

Under double jeopardy clause, defendant who fails to appear for single court proceeding may be convicted of only one violation of Bail Reform Act for failing to appear in court when required, even if proceeding involves more than one underlying charge. U.S. Const. Amend. 5; D.C. Code 1981, § 23-1327(a)(1, 2). *Lennon v.*

United States, 736 A.2d 208, 1999 D.C. App. LEXIS 141 (1999).

Independent offense.

Offense of wilful failure to appear in court as required constitutes a crime which is independent of the offense for which the appearance was required; thus, conviction on underlying offense is neither an element of, nor condition precedent to, conviction for wilful failure to appear in court as required. D.C. Code § 23-1327. *Williams v. United States*, 331 A.2d 341, 1975 D.C. App. LEXIS 311 (1975).

Fact that underlying burglary charge was dismissed did not render invalid defendant's conviction for wilfully failing to appear at preliminary hearing on burglary charge. D.C. Code § 23-1327. *Williams v. United States*, 331 A.2d 341, 1975 D.C. App. LEXIS 311 (1975).

Phrase "released. . . prior to the commencement of his sentence" in statute relating to offense of wilful failure to appear in court as required was intended to make it certain that defendant would be subject to sanctions of bail-jumping statute at all stages of criminal proceeding until he surrenders to serve his sentence and was not intended to indicate that conviction and sentence in underlying offense are conditions precedent to bail-jumping conviction. D.C. Code § 23-1327. *Williams v. United States*, 331 A.2d 341, 1975 D.C. App. LEXIS 311 (1975).

Intent.

— Ignorance or mistake, intent.

Defendant's alleged drug use did not establish defense of mistake to charge of violating Bail Reform Act by willfully failing to appear for sentencing. D.C. Code 1981, § 23-1327(a). *Cooper v. United States*, 680 A.2d 1370, 1996 D.C. App. LEXIS 141 (1996).

Defendant's failure to remember date on form instructing him when he was required to appear in court could not excuse his failure to appear at the scheduled time. D.C. Code 1981, § 23-1327(b). *Trice v. United States*, 525 A.2d 176, 1987 D.C. App. LEXIS 340 (1987).

— In general.

Specific intent to violate the law is not an element of the offense of bail jumping; Government is only required to prove that defendant's failure to appear in court when requested is knowing, intentional and deliberate, rather than inadvertent or accidental. D.C. Code 1981, § 23-1327(b). *Trice v. United States*, 525 A.2d 176, 1987 D.C. App. LEXIS 340 (1987).

— Intoxication, intent.

In prosecution for wilfully failing to appear at preliminary hearing on second-degree burglary charge, defendant was not entitled to instruction on defense of intoxication, where defen-

dant testified that he was intoxicated on alcohol and had been taking a stimulant at time when he was scheduled to appear but he produced no evidence that he had reached a point of incapacitating intoxication. D.C. Code § 23-1327. *Williams v. United States*, 331 A.2d 341, 1975 D.C. App. LEXIS 311 (1975).

— Wilfulness, intent.

Evidence was sufficient to show that defendant had not been released by a judicial officer after his case was called and passed over, and thus acted willfully, as required to support conviction for violating Bail Reform Act, by failing to be present in courtroom later same day when his case was called again; although computer codes entered by courtroom clerks indicated that usual courtroom procedures had not been followed for recording defendant's initial appearance and failure to remain in courtroom, defendant's failure to appear was by itself prima facie evidence of willful action, police officer testified that defendant had left courtroom because he wanted to find witnesses, and jury could infer, from the fact that the case was recalled the same day, that defendant knew he had not been released and the case would be recalled later in the day. *Gilliam v. United States*, 46 A.3d 360, 2012 D.C. App. LEXIS 305 (2012).

Fact that defendant accepted work assignment to drive bus to Montreal two days before his scheduled trial for misdemeanor charges, which assignment left him stranded when his return trip was cancelled, did not establish that defendant's failure to appear for trial was "willful" in violation of Bail Reform Act (BRA), despite defendant's testimony that he had been delayed on previous out-of-town assignments; testimony did not establish that such delays were normal. D.C. Code 1981, § 23-1327(a). *Foster v. United States*, 699 A.2d 1113, 1997 D.C. App. LEXIS 168 (1997).

Remand was required, following appeal of defendant's conviction for failure to appear for scheduled trial in violation of Bail Reform Act (BRA), to determine whether defendant's failure to contact authorities for five months after missing scheduled trial date constituted "willful" failure to appear under BRA. D.C. Code 1981, § 23-1327(a). *Foster v. United States*, 699 A.2d 1113, 1997 D.C. App. LEXIS 168 (1997).

To show that a defendant has willfully failed to appear, Government must prove that she: was released pending trial or sentencing; was required to appear in court on a specified date or at a specified time; failed to appear; and that failure to appear was willful. D.C. Code 1981, § 23-1327(a). *Goldsberry v. United States*, 598 A.2d 376, 1991 D.C. App. LEXIS 281 (1991).

Question of whether defendant's failure to appear for his scheduled court appearance was

willful was factual question for jury. D.C. Code 1981, § 23-1327(b). *Trice v. United States*, 525 A.2d 176, 1987 D.C. App. LEXIS 340 (1987).

Bail Reform Act does not shift burden to defendant to disprove presumed existence of element of crime of willful failure to appear as required while on pretrial release in violation of due process but merely creates, for trier of fact, a permissible inference of willfulness based on Government's showing of notice and failure to appear that trier of fact may, but need not, accept. D.C. Code § 23-1327(b). *Raymond v. United States*, 396 A.2d 975, 1979 D.C. App. LEXIS 283 (1979).

Instruction which merely permits and does not require trier of fact to infer willfulness from a defendant's receipt of notice that he was to appear and his failure to do so, properly construes Bail Reform Act. D.C. Code § 23-1327(b). *Raymond v. United States*, 396 A.2d 975, 1979 D.C. App. LEXIS 283 (1979).

For conviction of willful failure to appear while subject to conditions of release, Government satisfies burden of showing that failure to appear is willful by demonstrating what is commonly referred to as general intent of defendant to commit act of omission, and no specific intent need be proved. D.C. Code §§ 23-1327, 23-1327(a, b); 18 U.S.C. § 3150. *Patton v. United States*, 326 A.2d 818, 1974 D.C. App. LEXIS 293 (1974).

Trial court's reliance upon statutory presumption to establish the element of "willfulness," necessary to a conviction of bail jumping, did not violate defendant's Fifth Amendment rights to due process and privilege against self-incrimination; moreover, defendant did not raise that issue in the trial court and, under the circumstances, the Court of Appeals would decline to exercise its discretion to notice the asserted error raised for the first time on appeal. D.C. Code § 23-1327(a, b); U.S. Const. Amend. 5. *Robinson v. United States*, 322 A.2d 271, 1974 D.C. App. LEXIS 244 (1974).

Joint or separate trial of charges.

Joinder of charge of failure to appear in court for enhanced drug treatment program (EDTP) review hearing with charge of distribution of cocaine was permissible; charges were related in time, defendant's custody stemmed from substantive drug charge, and inference was permissible that defendant's failure to appear at EDTP court date was motivated by avoidance of prosecution for drug offense. D.C. Code 1981, §§ 23-311(a), 23-312, 23-1327(a), 33-541(a)(1); Criminal Rules 8(a), 13. *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

Defendant's right to fair trial was not violated due to joinder of charge of failure to appear in court for enhanced drug treatment program (EDTP) review hearing with substan-

tive charge of distribution of cocaine, and thus defendant was not entitled to mistrial, despite claim that defendant suffered prejudice by having to introduce evidence of his drug use to combat consciousness of guilt instruction for which government ultimately failed to adduce sufficient evidence to support; trial court's limiting instruction adequately informed jury as to evidence that could be used to determine defendant's guilt on drug distribution charge. D.C. Code 1981, §§ 23-311(a), 23-312, 23-1327(a), 33-541(a)(1); Criminal Rules 8(a), 13. *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

Consolidating charge that defendant had violated Bail Reform Act for trial with charges of unauthorized use of vehicle and of carrying pistol without license was not abuse of discretion, in light of fact that a "connection" between the charged acts was manifested, that evidence of the other charges would be admissible in a separate bail violation charge to show motive for flight and willfulness and that evidence of the bail violation would be admissible in a separate trial of the other charges to demonstrate consciousness of guilt. D.C. Code §§ 22-2204(a), 22-3204, 23-111(a), 23-313, 23-1327(a, b); D.C. Code SCR, Criminal Rules 8(a), 13, 14. *Grant v. United States*, 402 A.2d 405, 1979 D.C. App. LEXIS 366 (1979).

Jury instructions.

In prosecution for willfully failing to appear in court, if there is evidence, however weak, to support it, a defendant is entitled to a requested instruction that he has presented evidence of special circumstances which prevented him from appearing in court on the scheduled date and time, and that if the jury credits that evidence, this may create a reasonable doubt concerning whether the government has proven willfulness beyond a reasonable doubt. *Fearwell v. United States*, 886 A.2d 95, 2005 D.C. App. LEXIS 556 (2005).

Defendant was entitled to jury instruction regarding defense of special circumstances affecting his ability to appear in court, in prosecution in which defendant was convicted of willfully failing to appear in court; given trial testimony of defendant and his girlfriend regarding defendant's very poor health, and defendant's testimony that he was physically unable to attend court, there was sufficient evidence to warrant special circumstances instruction. *Fearwell v. United States*, 886 A.2d 95, 2005 D.C. App. LEXIS 556 (2005).

Notice of appearance date and location.

Jury's determination, in prosecution for failure to appear for sentencing in violation of Bail Reform Act, that defendant received adequate notice of date and time that she was to appear was not clearly erroneous. D.C. Code 1981,

§ 23-1327(a). *Cooper v. United States*, 680 A.2d 1370, 1996 D.C. App. LEXIS 141 (1996).

Defendant's argument on appeal from conviction for violating Bail Reform Act, that government did not establish that she failed to appear for sentencing because there was no evidence that sentencing judge was sitting in courtroom designated in defendant's notice to return, was meritless, since entry on that court's jacket shows that appellant did not appear, defendant admitted during cross-examination that she did not return to courthouse as scheduled, and defendant's brief on appeal stated that "the failure to appear was conceded_____." D.C. Code 1981, § 23-1327(a). *Cooper v. United States*, 680 A.2d 1370, 1996 D.C. App. LEXIS 141 (1996).

Evidence, including docket entries and defendant's signature on notice to return, was sufficient to sustain conviction for willfully failing to appear. D.C. Code 1981, § 23-1327(a). *Goldsberry v. United States*, 598 A.2d 376, 1991 D.C. App. LEXIS 281 (1991).

Testimony of courtroom clerk indicating that all cases in given calendar were posted in various places in courthouse was insufficient to establish that defendant was notified of courtroom change, as required to support conviction for failure to appear. D.C. Code 1981, § 23-1327. *Bolan v. United States*, 587 A.2d 458, 1991 D.C. App. LEXIS 50 (1991).

General practice of courtroom clerks when judges change courtrooms was relevant to issue whether defendant willfully failed to appear in courtroom changed from that listed on notice-to-return slip; general practice of clerks would tend to show implausibility of defendant's testimony that he sat in wrong courtroom all day without seeing posted notice or any court personnel inquiring about presence or where he was scheduled to be. Fed.Rules Evid.Rule 406, 18 U.S.C.; D.C. Code 1981, § 23-1327(a). *Smith v. United States*, 583 A.2d 975, 1990 D.C. App. LEXIS 316 (1990).

Proof of defendant's receipt of timely notice that judge would be hearing case in courtroom other than that listed on notice-to-return slip was element of prima facie case for willful failure to appear; Government was required to show that defendant was personally informed of where case was to be called or that circumstantial evidence, such as evidence of what occurred in or around courtroom, notified persons where hearing was to be held. D.C. Code 1981, § 23-1327(a). *Smith v. United States*, 583 A.2d 975, 1990 D.C. App. LEXIS 316 (1990).

Defendant's evidence regarding problems with his mail service did not rebut Government's showing that his failure to appear was willful; defendant's own testimony showed that he did not inform pretrial service agency of problem with receiving mail at correct address until at least one week after his scheduled court

appearance, that defendant failed to contact agency until more than three weeks after scheduled appearance, and that he never complied with one of the other conditions of his pretrial release, which was to report in person to the agency every week. D.C. Code 1981, § 23-1327(a). *Trice v. United States*, 525 A.2d 176, 1987 D.C. App. LEXIS 340 (1987).

Defendant's suggestion that his absence from court at the scheduled time was due to his failure to receive secondary notification from pretrial services agency as he had on several occasions in another pending case was not a legally acceptable excuse for his failure to appear, especially where his testimony that he relied on his aunt to forward mail to him was contradicted by his aunt's testimony that she had not received any of his mail for at least two years before trial. D.C. Code 1981, § 23-1327(a). *Trice v. United States*, 525 A.2d 176, 1987 D.C. App. LEXIS 340 (1987).

Trial court, which believed that notice provided defendant by continuance slip was sufficient to notify him of requirement to appear and that defendant could not justifiably rely on reminders sent by bail agency, did not abuse its discretion in finding that allegedly newly discovered bail reminders, which contained no reference to status hearing that defendant failed to attend, would not have resulted in acquittal on charge of willful failure to appear in court. D.C. Code § 23-1327(b). *Raymond v. United States*, 396 A.2d 975, 1979 D.C. App. LEXIS 283 (1979).

Notice of penalties for nonappearance.

Incorrect indication on release order that penalties for failure to appear as required were those under District of Columbia Bill Reform Act rather than under federal Bail Reform Act did not preclude defendant's release pursuant to federal Bail Reform Act; defendant was on notice that substantial penalties could be imposed if he failed to appear as ordered, and failed to show any prejudice as result of being advised of more lenient penalties applicable under District of Columbia statute. 18 U.S.C. § 3142(h)(2)(a); D.C. Code 1981, § 23-1327. *United States v. Stewart*, 104 F.3d 1377, 1997 U.S. App. LEXIS 876 (C.A.D.C. 1997), writ of certiorari denied by 520 U.S. 1246, 117 S. Ct. 1856, 137 L. Ed. 2d 1058, 1997 U.S. LEXIS 3350, 65 U.S.L.W. 3782 (1997).

Relief from forfeiture.

Relevant to the exercise of court's discretion to set aside forfeiture of bail are factors such as willfulness of defendant's breach of bond conditions, participation of bondsman in rearresting defendant and prejudice suffered by government by breach of bond conditions. Fed.Rules Crim.Proc. rule 46(e)(1, 2), 18 U.S.C. United

States v. Nell, 515 F.2d 1351, 1975 U.S. App. LEXIS 13602 (C.A.D.C. 1975).

It is not the role of the Court of Appeals to prescribe the precise weight to be given to the various factors to be considered by trial court in exercising its discretion to set aside bail forfeiture. Fed.Rules Crim.Proc. rule 46(e)(1, 2), 18 U.S.C. United States v. Nell, 515 F.2d 1351, 1975 U.S. App. LEXIS 13602 (C.A.D.C. 1975).

When data bearing on relevant factors to be considered by trial court in exercise of discretion to set aside bail forfeiture is proffered, holding of an evidentiary hearing is essential to informed exercise of discretion based on what is right and equitable under the circumstances and the law. Fed.Rules Crim.Proc. rule 46(e)(1, 2), 18 U.S.C. United States v. Nell, 515 F.2d 1351, 1975 U.S. App. LEXIS 13602 (C.A.D.C. 1975).

Given proffer of data regarding asserted departures from customary practice by bail agency and clerk's office, bondsman's assistance in apprehending defendant and the delay or prejudice suffered by government by breach, it was error for trial judge not to have held an evidentiary hearing on motion of bondsman to set aside bond forfeiture. Fed.Rules Crim.Proc. rule 46(e), (e)(1, 2), 18 U.S.C. United States v. Nell, 515 F.2d 1351, 1975 U.S. App. LEXIS 13602 (C.A.D.C. 1975).

Review.

Prosecutor's improper rebuttal argument resulted in substantial prejudice to defendant, thus warranting reversal in prosecution for willfully failing to appear in court; prosecutor stated that defendant told jury he "chose" not to come to court despite fact that defendant testified he had no choice and was unable to attend court due to poor health, prosecutor's actions were grave in light of fact that prosecutor's statement had direct relationship to issue of failure to appear, judge's instruction was insufficient to alert jury to prosecutor's clear

mischaracterization of evidence, and government's evidence on failure to appear charge was not strong. Fearwell v. United States, 886 A.2d 95, 2005 D.C. App. LEXIS 556 (2005).

Issue as to whether sentencing court impermissibly considered defendant's national origin and his status as an illegal alien when imposing an enhanced sentence on his guilty pleas to credit card fraud, receiving stolen property, and one count of failure to appear in court would be reviewed for plain error, where defendant made assertion for first time on appeal and said nothing about such issue before the trial court. Yemson v. United States, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Even assuming *arguendo* that impeachment of defendant as to drug use with pretrial services agency report taken at time of her arrest on bench warrant was improper, any error was harmless in prosecution for violation of Bail Reform Act for willful failure to appear for sentencing, given significant amount of evidence against appellant, and fact that issue of her recent drug use was irrelevant to her alleged violation of Bail Reform Act; prosecution was merely responding to defendant's line of questioning on issue of alleged drug use, and court prevented prosecution from pursuing that issue once defendant denied cocaine use at time of arrest. D.C. Code 1981, § 23-1327(a). Cooper v. United States, 680 A.2d 1370, 1996 D.C. App. LEXIS 141 (1996).

Any prejudice that may have resulted, in prosecution for violation of Bail Reform Act for failure to appear for sentencing on drug charge, from prosecutor's impeachment of defendant with facts underlying original drug charge was harmless, since trial court sustained defendant's objection, court offered immediate corrective instruction, and court later gave limiting instruction as to that questioning. D.C. Code 1981, § 23-1327(a). Cooper v. United States, 680 A.2d 1370, 1996 D.C. App. LEXIS 141 (1996).

§ 23-1328. Penalties for offenses committed during release.

(a) Any person convicted of an offense committed while released pursuant to section 23-1321 shall be subject to the following penalties in addition to any other applicable penalties:

(1) A term of imprisonment of not less than one year and not more than five years if convicted of committing a felony while so released; and

(2) A term of imprisonment of not less than ninety days and not more than 180 days if convicted of committing a misdemeanor while so released.

(b) The giving of a warning to the person when released of the penalties imposed by this section shall not be a prerequisite to the application of this section.

(c) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

(July 29, 1970, 84 Stat. 649, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(d), 41 DCR 2608.)

Section references. — This section is referred to in §§ 23-1303, 23-1321 and 23-1322.

Prior Codifications. — 1981 Ed., § 23-1328.

1973 Ed., § 23-1328.

Emergency legislation. — For temporary amendment of section, see § 101(d) of the Om-

nibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 23-1321.

CASE NOTES

ANALYSIS

Construction and application.

Evidence.

Indictment.

Jury trial.

Validity.

Construction and application.

Statute which provides for an enhanced sentence for the commission of a criminal offense while on pretrial release for an arrest for a previous criminal offense, even though the defendant has not been convicted of the previous offense, does not violate due process. (Per Steadman, J., with three Judges joining and two Judges concurring.) D.C. Code 1981, § 23-1328; U.S. Const. Amends. 5, 14. Speight v. United States, 569 A.2d 124, 1989 D.C. App. LEXIS 245 (1989).

Evidence.

Defense counsel admitted during sentencing to defendant's release status at time charged offenses were committed, for purposes of determining whether that status was sufficiently proven to permit sentence enhancement, by electing not to challenge the government's proffer. Edwards v. United States, 767 A.2d 241, 2001 D.C. App. LEXIS 45 (2001).

Indictment.

Statute pursuant to which a person convicted of committing a crime while on pretrial release is subject to an enhanced sentence does not violate right to a grand jury indictment by

punishing a defendant for an offense for which he has not been indicted, in that the only additional fact necessary for application of the release offender statute is pretrial release status. D.C. Code 1981, § 23-1328; U.S.C. Const. Amend. 5. Speight v. United States, 569 A.2d 124, 1989 D.C. App. LEXIS 245 (1989).

Jury trial.

Statute providing that person convicted of offense committed while on release shall be subject to additional penalties does not create a new and separate crime and jury trial is not required on issue of whether accused committed offense while on release. D.C. Code § 23-1328. Tansimore v. United States, 355 A.2d 799, 1976 D.C. App. LEXIS 516 (1976).

Validity.

In resolving equal protection challenge to statute requiring that any person convicted of offense committed while on pretrial release is subject to certain additional penalties, rational basis test, rather than more rigorous strict scrutiny test, was applicable. D.C. Code § 23-1328; U.S. Const. Amend. 14. Daniel v. United States, 408 A.2d 1231, 1979 D.C. App. LEXIS 504 (1979).

Statute providing that any person convicted of offense committed while on pretrial release is subject to additional penalties was reasonable response to a legitimate governmental activity, i.e., prevention of crime, and thus did not deny equal protection. D.C. Code § 23-1328; U.S. Const. Amend. 14. Daniel v. United States, 408 A.2d 1231, 1979 D.C. App. LEXIS 504 (1979).

§ 23-1329. Penalties for violation of conditions of release.

(a) A person who has been conditionally released pursuant to section 23-1321 and who has violated a condition of release shall be subject to revocation of release, an order of detention, and prosecution for contempt of court.

(b)(1) Proceedings for revocation of release may be initiated on motion of the

United States Attorney or on the court's own motion. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer:

(A) Finds that there is:

(i) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or

(ii) Clear and convincing evidence that the person has violated any other condition of his release; and

(B) Finds that:

(i) Based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure that the person will not flee or pose a danger to any other person or the community; or

(ii) The person is unlikely to abide by a condition or conditions of release.

(2) If there is probable cause to believe that while on release, the person committed a dangerous or violent crime, as defined by § 23-1331, or a substantially similar offense under the laws of any other jurisdiction, a rebuttable presumption arises that no condition or combination of conditions will assure the safety of any other person or the community.

(3) The provisions of § 23-1322(d) and (h) shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of his release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than \$1,000, or both. A judicial officer or a prosecutor may initiate a proceeding for contempt under this section.

(d) Any warrant issued by a judge of the Superior Court for violation of release conditions or for contempt of court, for failure to appear as required, or pursuant to § 23-1322(d)(7), may be executed at any place within the jurisdiction of the United States. Such warrants shall be executed by a United States marshal or by any other officer authorized by law.

(e) A person who has been conditionally released and who violates a condition of that release by using a controlled substance or by failing to comply with the prescribed treatment for use of a controlled substance, may be ordered by the court, in addition to or in lieu of the penalties and procedures prescribed in subsections (a) through (d) of this section, to temporary placement in custody, when, in the opinion of the court, such action is necessary for treatment or to assure compliance with conditions of release. A person shall not be subject to an order of temporary detention under this subsection, unless before any such violation and order, the person has agreed in writing to the imposition of such an order as a sanction for the person's violation of a condition of release.

(f)(1) Within 180 days of the effective date of this act, the Department of Corrections, in consultation with the Federal Bureau of Prisons, the Court Services and Offender Supervision Agency, and the Pretrial Services Agency, shall promulgate regulations, in accordance with [Chapter 5 of Title 2] to establish standards of conduct and discipline for persons released pursuant to § 23-1321(c)(1)(B)(xi). Such regulations shall set forth sanctions for different kinds of violations, up to and including revocation of release and detention.

(2) If a person who has been released pursuant to § 23-1321(c)(1)(B)(xi) violates a standard of conduct for which the sanction is revocation of release, the Department of Corrections may take the person into its custody or, if necessary, apply for a warrant for the person's arrest.

(3) The Department of Corrections shall immediately notify the Superior Court of the District of Columbia ("the Court") of the detention of the person and request an order for the person to be brought before the Court without unnecessary delay. An affidavit stating the basis for the person's remand to the jail shall be filed forthwith with the Court.

(4) If, based on the affidavit described in paragraph (3) of this subsection, the Court finds probable cause to believe that the person violated a standard of conduct for which a sanction is revocation of release, it shall schedule a hearing for revocation of release under subsection (b) of this section and shall detain the person pending completion of the hearing.

(5) If, based on the affidavit described in paragraph (3) of this subsection, the Court does not find probable cause to believe that the person violated a standard of conduct for which the sanction is revocation of release, it shall order the release of the person with the original or modified conditions of release.

(July 29, 1970, 84 Stat. 649, Pub. L. 91-358, title II, § 210(a); July 3, 1992, D.C. Law 9-125, § 7, 39 DCR 2134; Oct. 10, 1998, D.C. Law 12-165, § 3, 45 DCR 2980; June 12, 2001, D.C. Law 13-310, § 2(d), 48 DCR 1648; Oct. 26, 2001, D.C. Law 14-42, § 24, 48)

Section references. — This section is referred to in §§ 23-1303 and 23-1322.

Prior Codifications. — 1981 Ed., § 23-1329.

1973 Ed., § 23-1329.

Effect of amendments. — D.C. Law 12-165 added subsec. (e).

D.C. Law 13-310, rewrote subsec. (b) which had read:

"(b) Proceedings for revocation of release may be initiated on motion of the United States Attorney. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be en-

tered unless, after a hearing, the judicial officer finds that—

"(1) there is clear and convincing evidence that such person has violated a condition of his release; and

"(2) based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure that such person will not flee or pose a danger to any other person or the community. The provisions of § 23-1322(d) and (h) shall apply to this subsection."; in subsec. (c) added the last sentence; and added subsec. (f). D.C. Law 14-42, divided par. (1)(B)(ii) of subsec. (b) into two paragraphs, with the second sentence redesignated as "par. (2)", and redesignated the existing par. (2) as par. (3).

Temporary Amendment of Section. — Section 2 of D.C. Law 13-50 inserted at the end of subsec. (b) "or the court's own motion.", and

added at the end of subsec. (c) "A judicial officer or a prosecutor may initiate a proceeding for contempt under this section."

Section 4 (b) of D.C. Law 13-50 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 13-304, in subsec. (b), inserted "or the court's own motion" at the end of the first sentence. Section 2(b) of that law, in subsec. (c), inserted a new sentence at the end to read as follows: "A judicial officer or a prosecutor may initiate a proceeding for contempt under this section."

Section 4(b) of D.C. Law 13-304 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Bail Reform Emergency Act of 1999 (D.C. Act 13-107, July 9, 1999, 46 DCR 6032).

For temporary (90-day) amendment of section, see § 2 of the Bail Reform Congressional Review Emergency Act of 1999 (D.C. Act 13-143, October 18, 1999, 46 DCR 9902).

For temporary (90-day) amendment of section, see § 2 of the Bail Reform Second Congressional Review Emergency Act of 1999 (D.C. Act 13-228, January 11, 2000, 47 DCR 485).

For temporary (90-day) amendment of section, see § 2 of the Bail Reform Emergency Act of 2000 (D.C. Act 13-414, August 14, 2000).

Legislative history of Law 9-125. — For legislative history of D.C. Law 9-125, see Historical and Statutory Notes following § 23-1321.

Legislative history of Law 12-165. — Law 12-165, the "Truth in Sentencing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-523, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 23, 1998, it was assigned Act No. 12-343 and transmitted to both Houses of Congress for its review. D.C. Law 12-165 became effective on October 10, 1998.

Legislative history of Law 13-304. — Law 13-304, the "Bail Reform Temporary Act of 2000", was introduced in Council and assigned Bill No. 13-786. The Bill was adopted on first and second readings on July 11, 2000, and October 3, 2000, respectively. Signed by the Mayor on October 17, 2000, it was assigned Act No. 13-443 and transmitted to both Houses of Congress for its review. D.C. Law 13-304 became effective on June 8, 2001.

Legislative history of Law 13-310. — For Law 13-310, see notes following § 13-1321.

Legislative history of Law 14-42. — Law 14-42, the "Technical Correction Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

CASE NOTES

ANALYSIS

Admissibility of evidence.
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Admissibility of evidence.

Defendant was denied constitutional right to testify in his own behalf under oath in proceeding to hold him in criminal contempt for violation of condition of pretrial release that he refrain from illegal drug use when trial court refused to permit defendant to describe his alleged presence in room when others were smoking crack cocaine to lay putative foundation for passive inhalation defense and to permit court to judge his demeanor. Criminal Rule 42(b); D.C. Code 1981, § 23-1329(c); U.S.

Const.Amends. 5, 14. *Beckham v. United States*, 609 A.2d 1122, 1992 D.C. App. LEXIS 146 (1992).

Trial court's erroneous refusal to allow defendant to testify in criminal contempt proceeding which was based upon alleged violation of condition of pretrial release that defendant refrain from illegal drug use was not harmless, although defendant had previously made unsworn statements to trial court denying illegal drug use in response to positive drug test results; unsworn statements consisted of defendant uttering 15 words in response to three questions by court which was not the equivalent of right to testify. Criminal Rule 42(b); D.C. Code 1981, § 23-1329(c); U.S. Const.Amends. 5, 14. *Beckham v. United States*, 609 A.2d 1122, 1992 D.C. App. LEXIS 146 (1992).

Defendant, who conceded in open court that he had knowingly violated two conditions of his release on personal recognizance, in effect confessed to contemptuous conduct and officers' statements in bail agency report introduced at hearing simply corroborated that confession, and thus violation of defendant's right to con-

front officers whose statements were contained in report was harmless beyond a reasonable doubt. D.C. Code SCR, Criminal Rule 42(b); D.C. Code §§ 11-721(e), 23-1329, 23-1330; U.S. Const. Amend. 6. In re Wiggins, 359 A.2d 579, 1976 D.C. App. LEXIS 535 (1976).

Bench warrants.

Bench warrants are not governed by the one-year limitation period of § 23-563(b), but rather are governed by this section, which sets forth no such time limit on the validity of misdemeanor warrants. *United States v. Long*, 125 WLR 2369 (Super. Ct. 1997).

A warrant issued under this section because of a defendant's failure to appear is a device by which a court restores to its custody a person who is already within its jurisdiction, i.e., one who has been arraigned and formally charged with an offense; these warrants are thus distinguishable from warrants issued under § 23-563. *United States v. Long*, 125 WLR 2369 (Super. Ct. 1997).

Burden of proof.

The evidentiary standard for the revocation of probation is the preponderance of the evidence. *Johnson v. United States*, 763 A.2d 707, 2000 D.C. App. LEXIS 297 (2000).

Construction and application.

Contempt statute was a proper vehicle for prosecuting defendant for violation of the magistrate judge's stay away order, requiring defendant to stay away from a specific block of city as a condition of pretrial release, even though defendant might have been prosecuted as well under statute governing penalties for violation of conditions of release. *Vest v. United States*, 834 A.2d 908, 2003 D.C. App. LEXIS 633 (2003).

The decision whether to revoke probation involves a two step inquiry: (1) determining whether a violation has occurred, and if so, (2) determining what action, if any, should be taken as a result. *Johnson v. United States*, 763 A.2d 707, 2000 D.C. App. LEXIS 297 (2000).

Criminal contempt proceeding is not criminal prosecution and, consequently, not all procedures required in criminal trial are necessary in hearing on charge of contempt. D.C. Code 1981, § 23-1329(c); Criminal Rule 42(b). *Smith v. United States*, 677 A.2d 1022, 1996 D.C. App. LEXIS 100 (1996).

Fundamental fairness is cornerstone of criminal contempt proceeding. D.C. Code 1981, § 23-1329(c); Criminal Rule 42(b). *Smith v. United States*, 677 A.2d 1022, 1996 D.C. App. LEXIS 100 (1996).

Contempt statute for violation of condition of release operates independently of and in addition to statute eliminating limitation on length of sentence for criminal contempt, thus the sentencing limit of six months' imprisonment

and \$1,000 fine does not apply to convictions for violations of pretrial release order constituting contempt. D.C. Code 1981, §§ 11-944, 16-705(b), 23-1329(c); U.S. Const. Amends. 5, 6, 14. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

Statute which provides for an enhanced sentence for the commission of a criminal offense while on pretrial release for an arrest for a previous criminal offense, even though the defendant has not been convicted of the previous offense, does not violate due process. (Per *Steadman, J.*, with three Judges joining and two Judges concurring.) D.C. Code 1981, § 23-1328; U.S. Const. Amends. 5, 14. *Speight v. United States*, 569 A.2d 124, 1989 D.C. App. LEXIS 245 (1989).

Although it is mandatory that accused be present at beginning stage of trial, this does not mean that trial court is helpless when a defendant does not appear at beginning of trial as directed; proper exercise of court's contempt power, after appropriate factual inquiry, appears to be a prescribed method of punishing other defendant who fails to appear for trial and, in addition, one who willfully fails to appear as required is subject to prosecution. D.C. Code SCR, Criminal Rule 43; D.C. Code §§ 11-944, 23-1327, 23-1330; 18 U.S.C. § 402. *Campbell v. United States*, 295 A.2d 498, 1972 D.C. App. LEXIS 230 (1972).

Defenses.

Defendant's alleged heroin addiction was not a defense to criminal contempt for violating condition of pretrial release not to use illegal drugs. D.C. Code 1981, §§ 23-1321(c)(1)(B), 23-1329. *Grant v. United States*, 734 A.2d 174, 1999 D.C. App. LEXIS 160 (1999).

Defendant's communication to the court, through a friend, that he would not be present when his case was called for trial, and his prompt surrender when he returned from his grandfather's funeral, might be worthy of consideration in mitigation of the contempt offense but did not alter the fact that defendant absented himself with prior consent of court. *Swisher v. United States*, 572 A.2d 85, 1990 D.C. App. LEXIS 61 (1990).

Desire to attend the funeral of one's grandfather does not constitute "necessity" as a defense to charge of contempt of court for failing to appear. *Swisher v. United States*, 572 A.2d 85, 1990 D.C. App. LEXIS 61 (1990).

Finding that defendant was in contempt for failing to appear at the time his case was called was supported by his admission that he did not appear because he had gone to his hometown for his grandfather's funeral. *Swisher v. United States*, 572 A.2d 85, 1990 D.C. App. LEXIS 61 (1990).

Double jeopardy.

Where criminal contempt sanction was imposed upon defendant for violating order of

conditional release by committing a drug offense which was incorporated into the conditions for that release, later attempt to prosecute defendant for the drug offense itself was barred by double jeopardy. (Per Justice Scalia with one Justice concurring and three Justices concurring in the judgment.) U.S. Const. Amend. 5; D.C. Code 1981, §§ 23-1329, 33-541(a). *U.S. v. Dixon*, 113 S.Ct. 2849, 1993 U.S. LEXIS 4405 (U.S. Dist. Col. 1993).

Neither the Double Jeopardy Clause nor the doctrine of collateral estoppel barred probation revocation, though probationer was acquitted of underlying offense of unlawful possession of a firearm by a convicted felon. *Johnson v. United States*, 763 A.2d 707, 2000 D.C. App. LEXIS 297 (2000).

Because probation revocation proceedings are not criminal prosecutions, and any consequent revocation does not punish the probationer for any crime charged subsequent to the imposition of probation, a probation revocation hearing cannot be the basis for a double jeopardy claim on ground of either multiple prosecution or multiple punishment. *Johnson v. United States*, 763 A.2d 707, 2000 D.C. App. LEXIS 297 (2000).

Elements of contempt.

Defendant could be found guilty of criminal contempt for violating court's pretrial release order without any proof that such violations interfered with orderly administration of justice; all that Government had to show was that defendant intentionally violated conditions of release. D.C. Code 1981, § 23-1329. *Grant v. United States*, 734 A.2d 174, 1999 D.C. App. LEXIS 160 (1999).

Elements of criminal contempt are willful disobedience of a court order causing an obstruction of the orderly administration of justice. *Swisher v. United States*, 572 A.2d 85, 1990 D.C. App. LEXIS 61 (1990).

Offense of criminal contempt requires both a contemptuous act and a wrongful state of mind. *Swisher v. United States*, 572 A.2d 85, 1990 D.C. App. LEXIS 61 (1990).

In order to convict an individual for criminal contempt, it is necessary to find beyond a reasonable doubt that the individual committed a volitional act that constitutes contempt; accordingly, in the instant case, a conviction of contempt could not be predicated solely on defendant's being arrested on probable cause, since the volitional act would be commission of a crime, not the matter of being arrested. D.C. Code §§ 11-944, 23-1321. *Parker v. United States*, 373 A.2d 906, 1977 D.C. App. LEXIS 322 (1977).

Notice or other process.

Notice requirement as to criminal contempt charges against defendant were met, and

charges did not have to be set forth in information, indictment, or show cause order, respecting defendant's failure to obey judicial order, as condition of pretrial release, to stay away from individuals involved in her upcoming prosecution for malicious destruction of property; defendant received notice of contempt charge through government's motion to hold hearing on whether defendant should be held in contempt for violating conditions of her pretrial release, defendant had notice that she was being charged with criminal contempt and factual basis for charge, and defendant had notice of and understood order to stay away. D.C. Code 1981, § 23-1329(c); Criminal Rule 42(b). *Smith v. United States*, 677 A.2d 1022, 1996 D.C. App. LEXIS 100 (1996).

In summary proceedings based on failure to appear in court, the accused is entitled to notice that he is being charged with criminal contempt, to the meaningful assistance of counsel, including a chance to tell the attorney the facts and secure advice, and to a reasonable opportunity to present a defense. Criminal Rule 42(a). *Swisher v. United States*, 572 A.2d 85, 1990 D.C. App. LEXIS 61 (1990).

It was error to hold defendant in contempt, for failure to appear when his case had been called, at the end of a proceeding which had begun as a routine proceeding to resolve a bench warrant and without giving defendant an opportunity to consult with his attorney. *Swisher v. United States*, 572 A.2d 85, 1990 D.C. App. LEXIS 61 (1990).

Review.

Strict adherence is required for provision, in the rule concerning conditional guilty pleas, mandating a written reservation of right to appeal the adverse determination of any specified pretrial motion; failure to specify a particular pretrial issue in the written plea agreement will preclude raising that issue on appeal. Fed.R.Cr.Proc. Rule 11(a)(2), 18 U.S.C.; Criminal Rule 11(a)(2). *Demus v. United States*, 710 A.2d 858, 1998 D.C. App. LEXIS 74 (1998).

Defendant's guilty plea on contempt charge did not act as waiver of defendant's challenge to legality of sentence he received on the charge. D.C. Code 1981, § 23-1329(c). *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

Sufficiency of evidence.

Defendant, a physician who received court order to stay away from patient as condition of his release on sexual abuse charge arising from accusations by patient, committed "criminal contempt" of court by subsequently speaking to patient at another physician's office and offering to pray with her, regardless of whether patient's allegations of sexual abuse were credible; physician's action demonstrated an intent

to remain in patient's presence. *Brown v. United States*, 766 A.2d 530, 2001 D.C. App. LEXIS 31 (2001).

Evidence was sufficient to find that probation was violated by probationer's constructively possessing a firearm; testimony at underlying

criminal trial that police officers found a gun underneath the probationer's car seat, and that the gun was in plain view, established that the gun was readily accessible to probationer. *Johnson v. United States*, 763 A.2d 707, 2000 D.C. App. LEXIS 297 (2000).

§ 23-1330. Contempt.

Nothing in this subchapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

(July 29, 1970, 84 Stat. 649, Pub. L. 91-358, title II, § 210(a).)

Cross references. — Contempt power of Superior Court, see § 11-944. 1973 Ed., § 23-1330.

Prior Codifications. — 1981 Ed., § 23-1330.

CASE NOTES

Construction and application.

Contempt statute for violation of condition of release operates independently of and in addition to statute eliminating limitation on length of sentence for criminal contempt, thus the sentencing limit of six months' imprisonment

and \$1,000 fine does not apply to convictions for violations of pretrial release order constituting contempt. D.C. Code 1981, §§ 11-944, 16-705(b), 23-1329(c); U.S. Const. Amends. 5, 6, 14. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

§ 23-1331. Definitions.

As used in this subchapter:

(1) The term "judicial officer" means, unless otherwise indicated, any person or court in the District of Columbia authorized pursuant to section 3041 of Title 18, United States Code, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court.

(2) The term "offense" means any criminal offense committed in the District of Columbia, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress.

(3) The term "dangerous crime" means:

(A) Any felony offense under Chapter 45 of Title 22 (Weapons) or Chapter 23 of Title 6 [Title 7] (Firearms Control);

(B) Any felony offense under Chapter 27 of Title 22 (Prostitution, Pandering);

(C) Any felony offense under Unit A of Chapter 9 of Title 48 (Controlled Substances);

(D) Arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business;

(E) Burglary or attempted burglary;

(F) Cruelty to children;

(G) Robbery or attempted robbery;

(H) Sexual abuse in the first degree, or assault with intent to commit first degree sexual abuse; or

(I) Any felony offense established by the Prohibition Against Human Trafficking Amendment Act of 2010 [D.C. Law 18-239; § 22-1831 et seq.] or any conspiracy to commit such an offense.

(4) The term “crime of violence” means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt or conspiracy to commit any of the foregoing offenses.

(5) The term “addict” means any individual who habitually uses any narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954 so as to endanger the public morals, health, safety, or welfare.

(6) The term “physical injury” means bodily harm greater than transient pain or minor temporary marks.

(July 29, 1970, 84 Stat. 650, Pub. L. 91-358, title II, § 210(a); July 28, 1989, D.C. Law 8-19, § 2(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(c), 37 DCR 24; May 8, 1993, D.C. Law 9-270, § 3, 39 DCR 9223; Oct. 2, 1993, D.C. Law 10-26, § 3, 40 DCR 3416; Aug. 20, 1994, D.C. Law 10-151, § 101(e), 41 DCR 2608; May 23, 1995, D.C. Law 10-257, § 401(f), 42 DCR 53; June 3, 1997, D.C. Law 11-273, § 3(a), 43 DCR 6168; June 12, 2001, D.C. Law 13-310, § 2(e), 48 DCR 1648; Oct. 17, 2002, D.C. Law 14-194, § 156(b), 49 DCR 5306; Apr. 24, 2007, D.C. Law 16-306, § 224(c), 53 DCR 8610; May 5, 2007, D.C. Law 16-308, § 3(b), 54 DCR 942; Oct. 23, 2010, D.C. Law 18-239, § 206(b), 57 DCR 5405.)

Cross references. — Attempt, see § 22-1803.

Section references. — This section is referred to in §§ 16-2310.01, 22-1803, 23-1322, and 23-1323.

Prior Codifications. — 1981 Ed., § 23-1331.

1973 Ed., § 23-1331.

Effect of amendments. — D.C. Law 13-310 rewrote pars. (3) and (4) which had read:

“(3) The term ‘dangerous crime’ means (A) taking or attempting to take property from another by force or threat of force, (B) unlawfully entering or attempting to enter any premises adapted for overnight accommodation of persons or for carrying on business with the intent to commit an offense therein, (C) arson or attempted arson of any premises adaptable for overnight accommodation of persons or for

carrying on business, (D) first degree sexual abuse, or assault with intent to commit first degree sexual abuse, (E) unlawful sale, distribution of or possession with intent to distribute a controlled substance, as ‘controlled substance’ is defined in the District of Columbia Official Code or any Act of Congress, if the offense is punishable by imprisonment for more than one year, or (F) possessing an unregistered firearm, carrying a pistol without a license, or carrying a concealed weapon in a place other than the person’s dwelling place, place of business, or on other land possessed by the person.

“(4) The term ‘crime of violence’ means murder, first degree sexual abuse, child sexual abuse, mayhem, kidnapping, robbery, burglary, voluntary manslaughter, extortion or blackmail accompanied by threats of violence, arson, assault with intent to commit any offense, assault

with a dangerous weapon, aggravated assault, armed carjacking, or an attempt or conspiracy to commit any of the foregoing offenses as defined by any Act of Congress or any State law, if the offense is punishable by imprisonment for more than one year.”

D.C. Law 14-194, in par. (4), added subpars. (A-1), (L-1), and (O-1).

D.C. Law 16-306 rewrote par. (4).

D.C. Law 16-308 added par. (6).

D.C. Law 18-239, in par. (3), deleted “or” from the end of subpar. (G), substituted “; or” for a period the end of subpar. (H), and added subpar. (I).

Emergency legislation. — For temporary amendment of section, see § 101(e) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary (90 day) amendment of section, see § 224(c) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 303 of Enhanced Crime Prevention and Abatement Emergency Amendment Act of 2006 (D.C. Act 16-446, July 21, 2006, 53 DCR 6477).

For temporary (90 day) amendment of section, see § 224(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 103 of Crime Reduction Initiative Emergency Amendment Act of 2006 (D.C. Act 16-491, October 19, 2006, 53 DCR 8818).

For temporary (90 day) amendment of section, see § 102(b) of Crime Reduction Initiative Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-9, January 16, 2007, 54 DCR 1471).

For temporary (90 day) amendment of section, see § 224(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 3(b) of Crime Reduction Initiative (Rebuttable Presumption) Congressional Review Emergency Act of 2007 (D.C. Act 17-24, April 19, 2007, 54 DCR 4033).

For temporary (90 day) amendment of section, see § 224(c) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

For temporary (90 day) amendment of section, see § 4 of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012,

Legislative history of Law 8-19. — For legislative history of D.C. Law 8-19, see Historical and Statutory Notes following § 23-1322.

Legislative history of Law 8-120. — For legislative history of D.C. Law 8-120, see Historical and Statutory Notes following § 23-1322.

Legislative history of Law 9-270. — Law 9-270, the “Carjacking Prevention Temporary Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-629. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-328 and transmitted to both Houses for Congress for its review. D.C. Law 9-270 became effective on May 8, 1993.

Legislative history of Law 10-26. — Law 10-26, the “Carjacking Prevention Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-16, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 7, 1993, and May 4, 1993, respectively. Signed by the Mayor on May 19, 1993, it was assigned Act No. 10-28 and transmitted to both Houses of Congress for its review. D.C. Law 10-26 became effective on October 2, 1993.

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 23-1321.

Legislative history of Law 10-257. — Law 10-257, the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

Legislative history of Law 11-273. — For legislative history of D.C. Law 11-273, see Historical and Statutory Notes following § 23-1322.

Legislative history of Law 13-310. — For Law 13-310, see notes following § 13-1321.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 23-113.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 23-104.

Legislative history of Law 16-308. — For Law 16-308, see notes following § 13-1322.

Legislative history of Law 18-239. — For history of Law 18-239, see notes under § 23-113.

References in text. — Section 4731 of the Internal Revenue Code of 1954, referred to in paragraph (5), was repealed by § 1101(b)(3)(A) of Pub. L.

CASE NOTES

ANALYSIS

Construction and application.
Crimes of violence.
Dangerous crimes.
Past conduct.

Construction and application.

If detention is unavailable under enumerated circumstances of Bail Reform Act, then defendant must be released, either on personal recognizance or on least restrictive condition or combination of conditions that will reasonably assure defendant's appearance and safety of any other person and community, no matter how dangerous or antisocial defendant may be. 18 U.S.C. § 3142(a)(1-3), (c, e, f). *United States v. Gloster*, 969 F. Supp. 92, 1997 U.S. Dist. LEXIS 9938 (1997).

Pretrial detention under Bail Reform Act must be narrowly circumscribed to preserve strong presumption against detention before trial or without trial, in order for Act to be constitutional. 18 U.S.C. § 3142(f)(1)(A). *United States v. Gloster*, 969 F. Supp. 92, 1997 U.S. Dist. LEXIS 9938 (1997).

Superior Court magistrate judges fell within definition of "judicial officer" as that term was used in statute permitting "judicial officers" to set conditions of pretrial release; another statute expressly authorized magistrate judges to determine conditions of release. *Vest v. United States*, 834 A.2d 908, 2003 D.C. App. LEXIS 633 (2003).

Crimes of violence.

"Categorical approach" was to be used to determine whether possession of firearm by convicted felon was "crime of violence" for which detention hearing could be ordered; court could look only to statutory definition of offense itself and not to specific circumstances under which alleged offense was committed. 18 U.S.C. §§ 922(g)(1), 3142(f)(1)(A). *United States v. Gloster*, 969 F. Supp. 92, 1997 U.S. Dist. LEXIS 9938 (1997).

Simple fact of being felon in possession of a weapon, without more, may pose substantial risk that physical force will be used, but does not establish use of violence or physical force in committing offense and, thus, possession was not "crime of violence" that could trigger detention hearing and pretrial detention under Bail Reform Act. 18 U.S.C. §§ 922(g)(1),

3142(f)(1)(A). *United States v. Gloster*, 969 F. Supp. 92, 1997 U.S. Dist. LEXIS 9938 (1997).

Defendant's being a convicted felon does not transform otherwise passive offense of possession of firearm into "crime of violence" that could trigger detention hearing and preventive detention under Bail Reform Act; neither act of possessing weapon nor fact of being a felon is in itself crime of violence, neither has as an element the use of physical force, and neither by its nature involves risk of physical force in its commission. 18 U.S.C. §§ 922(g)(1), 3142(f)(1)(A), 3156(a)(4)(A, B). *United States v. Gloster*, 969 F. Supp. 92, 1997 U.S. Dist. LEXIS 9938 (1997).

Dangerous crimes.

Allegation that plaintiff had been arrested for a "dangerous crime" did not give him standing to challenge constitutionality of preventive detention provisions of District of Columbia Court Reform and Criminal Procedure Act on ground that plaintiff was inhibited or deterred in exercise of his First Amendment rights, where there was no allegation that plaintiff had any reason to fear that preventive detention would be sought, there was no allegation that plaintiff was or had been inhibited or deterred in exercise of First Amendment rights, and the "dangerous crime" charge against plaintiff had been dismissed. D.C. Code §§ 23-1322(a)(1-3), 23-1331(3); U.S. Const. Amend. 1. *Dash v. Mitchell*, 356 F. Supp. 1292, 1972 U.S. Dist. LEXIS 15200 (1972), affirmed by 409 U.S. 808, 93 S. Ct. 164, 34 L. Ed. 2d 70, 1972 U.S. LEXIS 1157 (1972).

Past conduct.

Pretrial detention statute was not constitutionally vague as to defendant, on theory that Congress left meaning of "past conduct" supporting finding of dangerousness to discretion of judicial officer, where crimes with which defendant was charged and crimes which he admitted he had committed in four months preceding his arrest, rape, sodomy, two burglaries, and 17 robberies, as well as adjudication of his juvenile social file, were all prohibited conduct under concededly valid criminal laws. D.C. Code §§ 23-1321(b), 23-1322(b)(2)(B), 23-1331(3, 4). *United States v. Edwards*, 430 A.2d 1321, 1981 D.C. App. LEXIS 278 (1981), writ of certiorari denied by 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141, 1982 U.S. LEXIS 1411, 50 U.S.L.W. 3765 (1982).

§ 23-1332. Applicability of subchapter.

The provisions of this subchapter shall apply in the District of Columbia in lieu of the provisions of sections 3146 through 3152 of Title 18, United States Code.

(July 29, 1970, 84 Stat. 650, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1332. 1973 Ed., § 23-1332.

CASE NOTES

Construction and application.

Applications for release of prisoners convicted in the District of Columbia under federal criminal statutes having nationwide application must be considered under the "Bail Reform

Act of 1966" and not under the "Court Reform and Criminal Procedure Act". 18 U.S.C. § 3146 et seq.; D.C. Code § 23-1321 et seq. *United States v. Stanley*, 469 F.2d 576, 1972 U.S. App. LEXIS 7941 (C.A.D.C. 1972).

§ 23-1333. Consideration of juvenile history.

A judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required, and the safety of any other person and the community, take into account the person's juvenile law enforcement and case records.

(May 15, 1993, D.C. Law 9-272, § 107, 40 DCR 796.)

Prior Codifications. — 1981 Ed., § 23-1333.

Legislative history of Law 9-272. — Law 9-272, the "Criminal and Juvenile Justice Reform Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-374, which was referred to the Committee on the Judiciary.

The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-401 and transmitted to both Houses of Congress for its review. D.C. Law 9-272 became effective on May 15, 1993.

CHAPTER 15. OUT-OF-STATE WITNESSES.

Sec.

23-1501. Definitions.

23-1502. Hearing on recall of out-of-State witnesses by State courts; determination; travel allowance; penalty.

23-1503. Certificate providing for attendance

Sec.

of witnesses at criminal prosecutions in the District of Columbia; travel allowance; penalty.

23-1504. Exemption from arrest.

§ 23-1501. Definitions.

As used in this chapter —

(1) The term “witness” includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(2) The term “State” includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

(3) The term “summons” includes a subpoena, order, or other notice requiring the appearance of a witness.

(July 29, 1970, 84 Stat. 650, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1501.

1973 Ed., § 23-1501.

Editor’s notes. — Uniform Law: This sec-

tion is based upon § 1 of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.

§ 23-1502. Hearing on recall of out-of-State witnesses by State courts; determination; travel allowance; penalty.

(a) If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in the District of Columbia certifies under the seal of the court (1) that there is a criminal prosecution pending in that court, or that a grand jury investigation has commenced or is about to commence, (2) that a person within the District of Columbia is a material witness in the prosecution or grand jury investigation, and (3) that his presence will be required for a specified number of days, upon presentation of that certificate to any judge of the Superior Court of the District of Columbia, except as provided in subsection (c), such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to attend and testify in the prosecution or grand jury investigation in the requesting State, and that the laws of such State and of any other State through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the prosecution or grand jury investigation, as the case

may be, at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If the certificate presented under subsection (a) recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance, in the requesting State, the judge may in lieu of notification of hearing, direct that the witness be forthwith brought before him for a hearing. If the judge at the hearing is satisfied of the desirability of the custody and delivery of the witness, he may, in lieu of issuing subpoena or summons, order the witness to be forthwith taken into custody and delivered to an officer of the requesting State. The certificate shall be prima facie proof of the desirability of the custody and delivery of the witness.

(d) Any witness who is summoned as above provided and, after being paid or tendered by some properly authorized person the fees and allowances authorized for witnesses in criminal cases in United States district courts, fails without good cause to attend and testify as directed in the summons, shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from the Superior Court.

(July 29, 1970, 84 Stat. 651, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1502.

1973 Ed., § 23-1502.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 2 of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.

§ 23-1503. Certificate providing for attendance of witnesses at criminal prosecutions in the District of Columbia; travel allowance; penalty.

(a) If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in the District of Columbia, is a material witness in such a prosecution or a grand jury investigation in the District of Columbia which has commenced or is about to commence, a judge may issue a certificate under seal stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of the United States or the District of Columbia to assure his attendance in the District of Columbia. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in the District of Columbia he shall be tendered the fees and allowances authorized for witnesses in criminal cases in United States district courts. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the District of Columbia for a period longer than that specified in the certificate, unless otherwise ordered by the court. If the witness, after coming into the District of Columbia, fails without good cause to attend and testify as directed in the summons, he may be punished in the manner provided for the punishment of any other witness who disobeys a

summons issued from the court in the District of Columbia where the prosecution has been instituted or the grand jury investigation has commenced or is about to commence.

(July 29, 1970, 84 Stat. 651, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1503.

1973 Ed., § 23-1503.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 3 of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.

§ 23-1504. Exemption from arrest.

(a) Any person who comes into the District of Columbia in obedience to a summons directing him to attend and testify in the District of Columbia shall not, while in the District of Columbia, pursuant to the summons, be subject to arrest or the service of process, civil or criminal, in connection with any matter which arose before his entrance into the District of Columbia under the summons.

(b) Any person who is in the process of passing through the District of Columbia for the purpose of proceeding to or returning from a State which has summoned him to attend and testify shall not be subject to arrest or the service of process, civil or criminal, in connection with any matter which arose at some other time.

(July 29, 1970, 84 Stat. 652, Pub. L. 91-358, title II, § 210(a).)

Prior Codifications. — 1981 Ed., § 23-1504.

1973 Ed., § 23-1504.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 4 of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.

CASE NOTES

Construction and application.

Statute protecting any person who comes into District of Columbia in obedience to a summons directing him to attend and testify from service of process in connection with any matter which arose before his entrance into District of Columbia under the summons did not apply such as to preclude courtroom clerk from serving mother with petition to terminate

her parental rights when mother appeared in court for status hearing in neglect case involving children, given that, even assuming that mother resided outside District of Columbia on date of service, she was not present in court on that date pursuant to a subpoena, order, or other notice directing her to attend and testify. In re B.J., 917 A.2d 86, 2007 D.C. App. LEXIS 76 (2007).

CHAPTER 17. DEATH PENALTY [REPEALED].

Sec.

23-1701 to 23-1705. [Repealed].

§§ 23-1701 to 23-1705. Capital punishment; provision for death chamber; appointment of executioner and assistants; fees; sentences to be in writing and certified copy furnished; who may be present at execution; fact of execution to be certified to clerk of court; place of execution [Repealed].

Repealed.

(Feb. 26, 1981, D.C. Law 3-113, § 3, 27 DCR 5624.)

Legislative history of Law 3-113. — Law 3-113, the “District of Columbia Death Penalty Repeal Act of 1980,” was introduced in Council and assigned Bill No 3-395, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on Novem-

ber 12, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 17, 1980, it was assigned Act No. 3-307 and transmitted to both Houses of Congress for its review.

CHAPTER 19. CRIME VICTIMS' RIGHTS.

Sec.

23-1901. Crime victims' bill of rights.

23-1902. Notice to crime victims.

23-1903. Crime victim privacy and security.

Sec.

23-1904. Crime victims' rights at sentencing.

23-1905. Definitions.

23-1906. Applicability.

§ 23-1901. Crime victims' bill of rights.

(a) Officers or employees of the District of Columbia engaged in the detection, investigation, or prosecution of crime or the judicial process shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b) of this section.

(b) A crime victim has the right to:

(1) Be treated with fairness and with respect for the victim's dignity and privacy;

(2) Be reasonably protected from the accused offender;

(3) Be notified of court proceedings;

(4) Be present at all court proceedings related to the offense, including the sentencing, and release, parole, record-sealing, and post-conviction hearings, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony or where the needs of justice otherwise require;

(5) Confer with an attorney for the prosecution in the case which does not include the authority to direct the prosecution of the case;

(6) An order of restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;

(7) Information about the conviction, sentencing, imprisonment, detention, and release of the offender, and about any court order to seal the offender's criminal records;

(8) Notice of the rights provided in this chapter and under the laws of the District of Columbia; and

(9) Be notified of any available victim advocate or other appropriate person to develop a safety plan and appropriate services.

(c) This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b) of this section.

(June 8, 2001, D.C. Law 13-301, § 302(b), 47 DCR 7039; May 5, 2007, D.C. Law 16-307, § 3(b)(1), 54 DCR 868; Oct. 23, 2010, D.C. Law 18-239, § 206(c), 57 DCR 5405.)

Effect of amendments. — D.C. Law 16-307, in subsec. (b)(4), substituted "and release, parole, record-sealing, and post-conviction hearings," for "and release or parole hearings,"; and, in subsec. (b)(7), substituted "offender, and about any court order to seal the offender's criminal records" for "offender".

D.C. Law 18-239, in subsec. (b), deleted "and"

from the end of par. (7), substituted "; and" for a period the end of par. (8), and added par. (9).

Legislative history of Law 13-301. — Law 13-301, the "Senior Protection Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-297, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June

26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-396 and transmitted to both Houses of Congress for its review. D.C. Law 13-301 became effective on June 8, 2001.

Legislative history of Law 16-307. — Law 16-307, the “Criminal Record Sealing Act of 2006”, was introduced in Council and assigned Bill No. 16-746, which was referred to the Committee on the Judiciary. The Bill was ad-

opted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-631 and transmitted to both Houses of Congress for its review. D.C. Law 16-307 became effective on May 5, 2007.

Legislative history of Law 18-239. — For history of Law 18-239, see notes under § 23-113.

§ 23-1902. Notice to crime victims.

(a) The head of each department and agency of the District of Columbia engaged in the detection, investigation, or prosecution of crime or in the judicial process shall designate the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) of this section at each stage of a criminal case.

(b) At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall identify the victim or victims of a crime.

(c)(1) At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall inform identified victims of:

(A) Their right to receive the services described in this subsection and a listing of their bill of rights as contained in section 23-1901;

(B) The name, title, business address and telephone number of the responsible official to whom the victim should address a request for assistance to obtain the services described in this subsection;

(C) The place where the victim may receive emergency medical and social services;

(D) Any restitution, crime victims' compensation, crime victims' assistance or other relief for which the victim may be eligible under this or any other law and the manner in which such relief may be obtained;

(E) The names and phone numbers of public and private victim assistance programs that are available to provide counseling, treatment, and other support to the victim;

(F) The procedure and resources available for reasonable protection of the victim; and

(G) The police report number, if available, and other identifying case information.

(2) During the investigation and prosecution of a crime, a responsible official shall provide the victim, to the extent possible, with timely notice of the:

(A) Status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) Arrest of a suspected offender;

(C) Filing of criminal charges, the nolle prosequi of the case, or the dismissal of all charges against a suspected offender;

(D) Date of each scheduled court proceeding and any scheduling changes;

(E) Release or detention status of an offender or suspected offender;
 (F) Acceptance of a plea of guilty, nolo contendere or an Alford plea, or the rendering of a verdict after trial; and

(G) Sentence or disposition imposed on an offender, including the date on which the offender will be eligible for parole or release.

(d) After trial, a responsible official shall provide a victim with timely notice of the:

(1) Scheduling of a release, parole, record-sealing, or post-conviction hearing for the offender.

(2) Escape, work release, furlough, or any other form of release from custody of the offender; and

(3) Death of the offender, if the offender dies while in custody or under supervision.

(e) The victim or the representative of the victim appointed by the court has a continuing obligation to provide the appropriate investigative, prosecutive, judicial, or correctional agency with correct and up-to-date information on the victim's name and address or an alternate means by which the victim can be given notice.

(f) This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by this chapter.

(June 8, 2001, D.C. Law 13-301, § 302(b), 47 DCR 7039; May 5, 2007, D.C. Law 16-307, § 3(b)(2), 54 DCR 868.)

Effect of amendments. — D.C. Law 16-307 rewrote subsec. (d)(1), which had read as follows: "(1) Scheduling of a release or parole hearing for the offender;".

Legislative history of Law 13-301. — For Law 13-301, see notes following § 23-1901.

Legislative history of Law 16-307. — For Law 16-307, see notes following § 23-1901.

§ 23-1903. Crime victim privacy and security.

(a) Before, during, and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that may occur between the victim and the victim's family with the accused or the accused's or respondent's family, and defense witnesses.

(b) The accused or defendant, the accused's or defendant's attorney or another person acting on behalf of the accused or defendant shall clearly identify himself or herself as being, representing or acting on behalf of the accused, defendant, or respondent in any contact with the victim.

(c) A responsible official shall arrange for any crime victim's property being held for evidentiary purposes to be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(d) In a proceeding in which a child is called to give testimony, on motion by the attorney for the government or the victim's legal or court-appointed representative, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child

must be involved with the criminal justice system. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child witness.

(June 8, 2001, D.C. Law 13-301, § 302(b), 47 DCR 7039.)

Legislative history of Law 13-301. — For Law 13-301, see notes following § 23-1901.

§ 23-1904. Crime victims' rights at sentencing.

(a) Crime victims shall have the right to be present at the defendant's sentencing, release, parole, post-conviction, and record-sealing hearings.

(b) Crime victims shall have the right to submit, prior to the imposition of sentence, a written victim impact statement containing information concerning any emotional, psychological, financial, or physical harm done to or loss suffered by the victim.

(c) In determining the appropriate sentence to be imposed on the defendant, the Court shall consider any victim impact statement submitted in accordance with this chapter and such statement shall be made a part of the pre-sentence report filed by the Court Services and Offender Supervision Agency.

(d) Crime victims shall have the right to offer at the defendant's release or parole hearing a written statement of the victim's opinion whether the defendant should be granted release or parole.

(e) Crime victims shall have the right to make a statement at the defendant's sentencing and record-sealing hearings. The absence of the crime victim shall not preclude the court from holding the sentencing or record-sealing hearings.

(f)(1) In addition to a crime victim, a representative of a community affected by the crime of which the defendant has been convicted shall have the right to submit, prior to imposition of sentence, a community impact statement and the court shall consider the community impact statement in determining the appropriate sentence to be imposed on the defendant. If more than one community is affected, each may submit a statement pursuant to this paragraph.

(2) Sentencing in a misdemeanor case shall not be continued solely because a community impact statement has not been submitted.

(3) The Chief Judge of the Superior Court shall establish reasonable procedures with respect to time and manner in which community impact statements are submitted to the court.

(June 8, 2001, D.C. Law 13-301, § 302(b), 47 DCR 7039; May 5, 2007, D.C. Law 16-307, § 3(b)(3), 54 DCR 868; Nov. 6, 2010, D.C. Law 18-259, § 2(a), 57 DCR 5591.)

Effect of amendments. — D.C. Law 16-307 rewrote subsecs. (a) and (e).

D.C. Law 18-259 added subsec. (f).

Legislative history of Law 13-301. — For Law 13-301, see notes following § 23-1901.

Legislative history of Law 16-307. — For Law 16-307, see notes following § 23-1901.

Legislative history of Law 18-259. — Law 18-259, the “Community Impact Statement Amendment Act of 2010”, was introduced in

Council and assigned Bill No. 18-549, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on May 4, 2010, and June 1, 2010, respectively. Signed by the Mayor on June 28, 2010, it was assigned Act No. 18-446 and transmitted to both Houses of Congress for its review. D.C. Law 18-259 became effective on November 6, 2010.

CASE NOTES

ANALYSIS

Authentication.

Construction and application.

Contents.

Authentication.

Letters from murder victim’s family considered by judge in sentencing defendant were not required to be verified *Collins v. United States*, 631 A.2d 48, 1993 D.C. App. LEXIS 228 (1993).

Construction and application.

Trial court may consider wide range of information in fashioning appropriate sentence for defendant. *Collins v. United States*, 631 A.2d 48, 1993 D.C. App. LEXIS 228 (1993).

Trial court may consider more than one victim impact statement, but must consider at

least one, filed in manner prescribed by Victims Rights Amendment Act, regarding emotional, psychological, financial or physical harm done to or suffered by victim’s immediate family, in determining appropriate sentence. *Collins v. United States*, 631 A.2d 48, 1993 D.C. App. LEXIS 228 (1993).

Contents.

Contents of correspondence from murder victim’s family including opinions about defendant’s character and sentence he should receive, victim’s funeral program, and four crayon drawings by his daughter, were not inflammatory or beyond scope permitted by Victims Rights Amendment Act. *Collins v. United States*, 631 A.2d 48, 1993 D.C. App. LEXIS 228 (1993).

§ 23-1905. Definitions.

For purposes of this section,

(1) The term “community” means a formal or informal association or group of people living, working, or attending school in the same place or neighborhood and sharing common interests arising from social, business, religious, governmental, scholastic, or recreational associations.

(1A) The term “community impact statement” means a written statement that provides information about the social, financial, emotional, and physical effects of the defendant or crime on the community.

(1B) The term “court” means the Superior Court of the District of Columbia.

(2)(A) The term “victim” or “crime victim” means a person who or entity which has suffered direct physical, emotional, or pecuniary harm:

(i) As a result of the commission of any felony or violent misdemeanor in violation of any criminal statute in the District of Columbia;

(ii) While assisting lawfully to apprehend a person reasonably suspected of having committed or attempted a crime;

(iii) While assisting a person against whom a crime has been committed or attempted if the assistance was rendered in a reasonable manner; or

(iv) While attempting to prevent the commission of a crime.

(B) In the case of a victim or crime victim:

(i) That is an institutional entity, the term “victim” or “crime victim” includes an authorized representative of the entity.

(ii) Who is under 18 years of age, incompetent, incapacitated, or deceased, the term “victim” or “crime victim” includes a representative appointed by the court to exercise the rights and receive the services set forth in this chapter on behalf of the victim.

(C) The term “victim” shall not include any person who committed or aided or abetted in the commission of the crime.

(June 8, 2001, D.C. Law 13-301, § 302(b), 47 DCR 7039; Nov. 6, 2010, D.C. Law 18-259, § 2(b), 57 DCR 5591.)

Effect of amendments. — D.C. Law 18-259 redesignated existing par. (1) as (1B); and added pars. (1) and (1A).

Legislative history of Law 13-301. — For Law 13-301, see notes following § 23-1901.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 23-1904.

§ 23-1906. Applicability.

The provisions of this chapter requiring notice to the victim shall be applicable when computer systems are in place at the Metropolitan Police Department or the Superior Court of the District of Columbia to provide such notice or one year after the effective date of this chapter [June 8, 2001], whichever occurs first, and will apply only to crimes committed on or after that date.

(June 8, 2001, D.C. Law 13-301, § 302(b), 47 DCR 7039.)

Legislative history of Law 13-301. — For Law 13-301, see notes following § 23-1901.

TITLE 24. PRISONERS AND THEIR TREATMENT.

Chapter

1. Transfer of Prison System to Federal Authority.
2. Prisons and Prisoners.
3. Probation.
4. Indeterminate Sentences and Paroles.
5. Insane Defendants.
- 5A. Evaluation and Treatment of Incompetent Defendants.
6. Rehabilitation of Alcoholics.
7. Rehabilitation of Users of Narcotics.
- 7A. Treatment Instead of Jail for Certain Non-Violent Offenders.
8. Interstate Agreement on Detainers.
9. Youth Offender Programs.
10. Interstate Corrections Compact.
11. Interstate Compact on Juveniles.
12. Judiciary Square Detention Facility Construction.
13. Ex-Offenders.
14. Delivery of Health Care to Inmates.

CHAPTER 1. TRANSFER OF PRISON SYSTEM TO FEDERAL AUTHORITY.

Subchapter I. Corrections

Sec.

- 24-101. Bureau of Prisons.
- 24-101a. District of Columbia Corrections Information Council [Not funded].
- 24-102. Corrections Trustee.
- 24-103. Priority consideration for employees of the District of Columbia.
- 24-104. [Reserved].
- 24-105. Liability for and litigation authority of corrections trustee.
- 24-106. Permitting expenditure of funds to carry out certain sewer agreement.

Subchapter II. Sentencing

- 24-111. Truth in sentencing commission.
- 24-112. General duties, powers, and goals of Commission.

Sec.

- 24-113. Data collection.
- 24-114. Enactment of amendments to District of Columbia Official Code.

Subchapter III. Offender Supervision and Parole

- 24-131. Parole.
- 24-132. Pretrial services, parole, adult probation and offender supervision trustee.
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Subchapter IV. Special Provisions for Trustees

- 24-141. Reemployed annuitant Trustee.
- 24-142. Exemption from personnel and budget ceilings for Trustees and related agencies.

Subchapter I. Corrections.

§ 24-101. Bureau of Prisons.

(a) *Felons sentences pursuant to the truth-in-sentencing requirements.* — Not later than October 1, 2001, any person who has been sentenced to incarceration pursuant to the District of Columbia Official Code or the truth-in-sentencing system as described in § 24-111 shall be designated by the

Bureau of Prisons to a penal or correctional facility operated or contracted for by the Bureau of Prisons, for such term of imprisonment as the court may direct. Such persons shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States consistent with the sentence imposed.

(b) *Felons sentenced pursuant to the D.C. Code.* — Notwithstanding any other provision of law, not later than December 31, 2001, the Lorton Correctional Complex shall be closed and the felony population sentenced pursuant to the District of Columbia Official Code residing at the Lorton Correctional Complex shall be transferred to a penal or correctional facility operated or contracted for by the Bureau of Prisons. Such persons shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States consistent with the sentence imposed, and the Bureau of Prisons shall be responsible for the custody, care, subsistence, education, treatment and training of such persons.

(c) *Privatization.* —

(1) *Transition of inmates from Lorton.* — The Bureau of Prisons shall house, in private contract facilities:

(A) At least 2000 District of Columbia sentenced felons by December 31, 1999; and

(B) At least 50 percent of the District of Columbia sentenced felony population by September 30, 2003.

(2) *Duties of Deputy Attorney General.* — The Deputy Attorney General shall

(A) Be responsible for overseeing Bureau of Prisons privatization activities; and

(B) Submit a report to Congress on October 1 of each year detailing the progress and status of compliance with privatization requirements.

(3) *Duties of Attorney General.* — The Attorney General shall:

(A) Conduct a study of correctional privatization, including a review of relevant research and related legal issues, and comparative analysis of the cost effectiveness and feasibility of private sector and Federal, State, and local governmental operation of prisons and corrections programs at all security levels; and

(B) Submit a report to Congress no later than one year after August 5, 1997.

(d) *Site acquisition and construction.* — In order to house the District of Columbia felony inmate population the Bureau of Prisons shall acquire land, construct and build new facilities at sites selected by the Bureau of Prisons, or contract for appropriate bed space, but no facilities may be built on the grounds of the Lorton Reservation.

(e) *National capital planning.* — Notwithstanding any other provision of law, the requirements of the National Capital Planning Act of 1952 (40 U.S.C. 71 et seq.) shall not apply to any actions taken by the Bureau of Prisons or its agents or employees.

(f) *Department of Corrections authority.* — The District of Columbia Department of Corrections shall remain responsible for the custody, care, subsistence,

education, treatment, and training of any person convicted of a felony offense pursuant to the District of Columbia Official Code and housed at the Lorton Correctional Complex until December 31, 2001, or the date on which the last inmate housed at the Lorton Correctional Complex is designated by the Bureau of Prisons, whichever is earlier.

(g) *Lorton Correctional Complex.* —

(1) *Transfer of functions.* —

(A) Notwithstanding any other provision of law, to the extent the Bureau of Prisons assumes functions of the Department of Corrections under this subchapter, the Department is no longer responsible for such functions and the provisions of §§ 24-211.01 and 24-211.02, that apply with respect to such functions are no longer applicable.

(B) Contingent on the General Services Administration (GSA) receiving the necessary appropriations to carry out the requirements of this paragraph and subsection (g), and notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 471 et seq.), not later than 60 days after the date of enactment of the Lorton Technical Corrections Act of 1998 [Oct. 21, 1998], any property on which the Lorton Correctional Complex is located shall be transferred to the GSA.

(C) Not later than one year after the date of enactment of the Lorton Technical Corrections Act of 1998 [Oct. 21, 1998], Fairfax County shall submit a reuse plan that complies with all requisite approvals to the Administrator of General Services, that aims to maximize use of the land for open space, park land, or recreation, while delineating permissible or required uses, potential development densities, and any time limits on such development factors of the property on which the Lorton Correctional Complex is located.

(D) Not later than 180 days after the date of enactment of the Lorton Technical Corrections Act of 1998 [Oct. 21, 1998], the Secretary of the Interior shall notify GSA of any property it requests to be transferred to the Department of the Interior for the purpose of a land exchange by the United States Fish and Wildlife Service within the Commonwealth of Virginia or such other purposes consistent with the reuse plan developed by Fairfax County as the Secretary may request. The Administrator of General Services shall approve the Secretary's request to the extent that the request is consistent with the reuse plan developed by Fairfax County and does not result in a significant reduction in the marketability or value of any remaining property. The Administrator of General Services shall coordinate with the Secretary of the Interior to resolve any conflicts presented by the Department of the Interior's request and shall transfer the property to the Department of the Interior at no cost.

(E) Any property not transferred to the Department of the Interior under subparagraph (D) shall be disposed of according to paragraphs (2) and (4).

(2) *Transfer of land.* —

(A) *In general.* —

(i) *Fairfax County Water Authority.* — 150 acres of parcel 106-4-001-54 located west of Ox Road (State Route 123) on which the Lorton

Correctional Complex is located shall be transferred, without consideration, to the Fairfax County Water Authority of Fairfax, Virginia.

(ii) *Fairfax County Parks Authority.* — Any acres of parcel 106-4-001-54 located west of Ox Road (State Route 123) on which the Lorton Correctional Complex is located not transferred under sub-subparagraph (i) shall be assigned to the Department of the Interior, National Park Service, for conveyance to the Fairfax County Parks Authority for recreational purposes pursuant to the section 203(k)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 484(k)(2) [now see 40 U.S.C. § 550(e)]).

(B) Condition of transfer.

(i) *Water services.* — The United States Government shall not transfer any parcels under this paragraph unless the Fairfax County Water Authority certifies that it will continue to provide water services to the Lorton Correctional Complex at the rate it provided water services prior to the transfer.

(ii) *Restriction on transfer.* — No Federal agency may transfer the property under this paragraph until the prospective recipient of the property provides to such agency —

(I) A land description survey suitable for transferring property under Virginia law; and

(II) Any necessary surveys to determine the presence of any hazardous substances, contaminants or pollutants.

(iii) *Lorton Correctional Complex.* — The Lorton Correctional Complex shall remain available for the District of Columbia Department of Corrections to house District of Columbia felony inmates until the last inmate at the Complex has been designated by the Bureau of Prisons or until December 31, 2003 [December 31, 2001], whichever is earlier.

(C) *Authorization.* — The General Services Administration and the National Park Service is authorized to expend any funds necessary to ensure that the transfer or conveyance under subparagraph (A) of this paragraph complies with all applicable environmental and historic preservation laws.

(3) *Water mains.* — Any water mains located on or across the Lorton Correctional Complex on the date of the transfers under paragraph (2) of this subsection, that are owned by the Fairfax County Water Authority and provide water to the public, shall be permitted to remain in place, and shall be operated, maintained, repaired, and replaced by the Fairfax County Water Authority or a successor agency furnishing water to the public in Fairfax County or adjacent jurisdictions, but shall not interfere with operations of the Lorton Correctional Complex.

(4) *Conditions on transfer of Lorton property east of Ox Road (State Route 123).* —

(A) *In General.* — With respect to property east of Ox Road (State Route 123) on which the Lorton Correctional Complex is located, the Administrator of General Services shall—

(i) Cooperate with the District of Columbia Corrections Trustee to determine property necessary for the Trustee to maintain the security of the Lorton Correctional Complex until its closure;

(ii) Prepare a report of title, complete a property description, provide protection and maintenance, conduct an environmental assessment of the property to determine the extent of contamination, complete National Environmental Policy Act of 1969 (42 U.S.C. § 4331 et seq.) and National Historic Preservation Act (16 U.S.C. § 470 et seq.) processes for closure and disposal of the property, and provide an estimate of the cost for remediation and contingent on receiving the necessary appropriations complete the remediation in compliance with applicable federal and state environmental laws;

(iii) Develop a disposition strategy incorporating the Fairfax County reuse plan and the Department of Interior's land transfer request, and resolve conflicts between the plan and the transfer request, or between the reuse plan, the transfer request and the results of the environmental studies;

(iv) Negotiate with any entity that has a lease, agreement, memorandum of understanding, right-of-way, or easement with the District of Columbia to occupy or utilize any parcels of such property on October 1, 1997, to perfect or extend such lease, agreement, memorandum of understanding, right-of-way, or easement;

(v) Transfer any property identified for use for open space, park land, or recreation in the Fairfax County reuse plan to the Northern Virginia Regional Park Authority, the Fairfax County Park Authority, or another public entity, subject to the condition that the recipient use the conveyed property only for open space, park land, or recreation and that the transfer be at fair market value considering the highest and best use of the property to be open space, park land, and recreation;

(vi) Immediately upon completing the remediation required under sub-subparagraph (ii) of this subparagraph (but in no event later than June 1, 2003), transfer any property located south of Silverbrooke Road which is identified for use for educational purposes in the Fairfax County reuse plan to the County, without consideration, subject to the condition that the County use the property only for educational purposes;

(vii) Not later than 60 days after the property is transferred to the General Services Administration, transfer at fair market value the six-acre parcel east of Shirley Highway on Interstate 95 to Amtrak, subject to such terms and conditions as the Administrator determines to be in the best interest of the United States;

(viii) Dispose of any parcels not reserved by the Department of the Interior and not otherwise addressed under this subparagraph at fair market value, subject to such terms and conditions as the Administrator determines to be in the best interest of the United States;

(ix) Deposit any proceeds from the sale of property on which the Lorton Correctional Complex is located into a special fund established in the treasury for purposes of covering real property utilization and disposal related expenses, including environmental compliance and remediation for the Lorton Correctional Complex until all property has been conveyed; and

(x) Deposit any remaining funds in the Policy and Operations appropriation account of the General Services Administration to be used for real property utilization and disposal activities until expended.

(B) *Report.* — Not later than 90 days after the date of the receipt of the Fairfax County reuse plan and the Department of the Interior property transfer request by the Administrator of General Services, the Administrator shall report to the Committees on Appropriations and Government Reform and Oversight of the House of Representatives, and the Committees on Appropriations and Governmental Affairs of the Senate on plans to comply with the terms of this paragraph and any estimated costs associated with compliance.

(C) *Authorization.* — There is authorized to be appropriated such sums as are necessary from the general funds of the Treasury, to remain available until expended, to the Policy and Operations appropriation account of the General Services Administration for the real property utilization and disposal activities in carrying out the provisions of this title.

(5) *Jurisdiction.* — Any property disposed of according to paragraphs (2) and (4) shall be under the jurisdiction of the Commonwealth of Virginia. Any development of such property and any property transferred to the Department of the Interior for exchange purposes shall comply with any applicable planning and zoning requirements of Fairfax County and the Fairfax County reuse plan.

(6) *Meadowood Farm Land Exchange.* —

(A) *In general.* — If, not later than January 15, 2001, Fairfax County, Virginia, agrees to convey fee simple title to the property on Mason Neck in excess of 800 acres depicted on the map dated June 2000, on file in the Office of the Director of the Bureau of Land Management, Eastern States (hereafter in this paragraph referred to as “Meadowood Farm”) to the Secretary of the Interior, then the Administrator of General Services shall agree to convey to Fairfax County, Virginia, fee simple title to the property located at the Lorton Correctional Complex north of Silverbrook Road, and consisting of more than 200 acres identified in the Fairfax County Reuse Plan, dated July 26, 1999, as land available for residential development in Land Units 1 and 2 (hereafter in this paragraph referred to as the “Laurel Hill Residential Land”), the actual exchange to occur no later than December 31, 2001.

(B) *Terms and conditions.* —

(i) When Fairfax County transfers fee simple title to Meadowood Farm to the Secretary of the Interior, the Administrator of General Services shall simultaneously transfer to the County the Laurel Hill Residential Land.

(ii) The transfer of property to Fairfax County, Virginia, under sub-subparagraph (i) of this subparagraph shall be subject to such terms and conditions that the Administrator of General Services considers to be appropriate to protect the interests of the United States.

(iii) Any proceeds derived from the sale of the Laurel Hill Residential Land by Fairfax County that exceed the County’s cost of acquiring, financing (which shall be deemed a County cost from the time of financing of the Meadowood Farm acquisition to the receipt of proceeds of the sale or sales of the Laurel Hill Residential Land until such time as the proceeds of such sale or sales exceed the acquisition and financing costs of Meadowood Farm to the County), preparing, and conveying Meadowood Farm and costs incurred for improving, preparing, and conveying the Laurel Hill Residential Land shall be

remitted to the United States and deposited into the special fund established pursuant to paragraph (4)(A)(viii) of this subsection.

(C) *Management of property.* — The property transferred to the Secretary of the Interior under this section shall be managed by the Bureau of Land Management for public use and recreation purposes.

(g-1) *District of Columbia Corrections Information Council.* —

(1) *Establishment.* — There is established a council to be known as the District of Columbia Corrections Information Council (hereafter referred to as “CIC”).

(2) *Membership.* — The CIC shall be composed of 3 members, appointed as follows:

(A) Two members appointed by the Mayor of the District of Columbia.

(B) One member to be appointed by the Council of the District of Columbia, by resolution.

(C) Of the members first appointed, the Mayor shall appoint one member for a one-year term. The other mayoral appointee and the Council appointee shall serve 2-year terms. Thereafter, members shall be appointed for terms of 2 years.

(D) The Mayor shall designate the Chairperson of the CIC.

(3) *Compensation.* — Members of the CIC shall not receive compensation for their service.

(4) *Duties.* — The CIC shall:

(A) Report to the Director of the Bureau of Prisons with advice and information regarding matters affecting the District of Columbia sentenced felon population;

(B) Conduct comprehensive inspections, unannounced whenever possible, of facilities housing District of Columbia sentenced felons and interview selected staff at each facility;

(B-i) Conduct comprehensive inspections of the District of Columbia’s Central Detention Facility in accordance with § 24-211.02(b)(1) and submit a report of each inspection to the Mayor, the Council, and the Director of the District of Columbia’s Department of Corrections;

(C) Review documents related to the conditions of confinement at each facility housing District of Columbia sentenced felons, including, but not limited to, inmate files and records, inmate grievances, incident reports, disciplinary reports, use of force reports, medical and psychological records, administrative and policy directives of the facility, and logs, records, and other data maintained by the facility; and

(D) Transmit to the Director of the Bureau of Prisons, the Mayor, the Council, and the Director of the District of Columbia’s Department of Corrections the following reports, copies of which shall be made available to the public:

(i) An annual report on the conditions of confinement of District of Columbia sentenced felons; and

(ii) A report on each inspection of a facility housing District of Columbia sentenced felons.

(5) *Meetings and hearings.* —

(A) *Meetings and hearings.* — The CIC shall meet as necessary to conduct official business.

(B) *Meetings and hearings.* — The presence of 2 members shall constitute a quorum necessary for the CIC to take official action.

(C) *Meetings and hearings.* — The CIC may act by an affirmative vote of at least 2 members.

(6) *Management and support services.* —

(A) The Chief Financial Officer shall provide financial support services and oversight for the CIC using personnel assigned to provide financial support services and oversight for the District of Columbia's Department of Corrections.

(B)(i) The Chief Procurement Officer shall provide contracting and procurement support services and oversight for the CIC using personnel assigned to provide contracting and procurement support services and oversight for the District of Columbia's Department of Corrections.

(ii) The CIC is authorized to contract with qualified private organizations or individuals for services in accordance with Unit A of Chapter 3 of Title 2.

(C) The CIC is authorized to appoint one employee to the Excepted Service established by subchapter IX of Chapter 6 of Title 1.

(h) *Timing of inmate transfers.* — As soon as practicable after August 5, 1997, the Director of the Bureau of Prisons shall begin the transferring of inmates to Bureau of Prison or private contract facilities required by this section.

(Aug. 5, 1997, 111 Stat. 734, Pub. L. 105-33, § 11201; Nov. 19, 1997, 111 Stat. 734, Pub. L. 105-100, § 157(e)(2); Oct. 21, 1998, 112 Stat. 2681-600, Pub. L. 105-277, § 141; Oct. 14, 1999, D.C. Law 13-49, § 7, 46 DCR 5153; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, §§ 163, 165; Oct. 13, 2001, D.C. Law 14-29, § 2, 48 DCR 7084; Jan. 30, 2004, D.C. Law 15-62, § 3, 50 DCR 6574; Oct. 2, 2010, D.C. Law 18-233, § 2(a), 57 DCR 4514.)

Prior Codifications. — 1981 Ed., § 24-1201.

Effect of amendments. — Section 163 of Public Law 106-522, in subsec. (g), redesignated clauses (g)(4)(A)(vi) through (ix) as clauses (vii) through (x), respectively, and added clause (vi).

Section 165 of Public Law 106-522 added par. (g)(6), relating to the Meadowood Farm land exchange.

D.C. Law 14-29 rewrote subsec. (h) which had read:

“(h) District of Columbia Corrections Information Council. —

“(1) Establishment.—There is established a council to be known as the District of Columbia Correction Information Council (hereafter referred to as ‘Council’).

“(2) Membership.—The Council shall be composed of 3 members appointed as follows: (A)

Two individuals appointed by the the District of Columbia. (B) One individual appointed by the Council of the District of Columbia. (3) Compensation.—Members of the Council may not receive pay, allowances, or benefits by reason of their service on the Council. (4) Duties.—The Council shall report to Director of the Bureau of Prisons with advice and information regarding matters affecting the District of Columbia sentenced felon population.”

D.C. Law 15-62 added subpar. (B-i) in subsec. (h)(4).

D.C. Law 18-223 repealed subsec. (h).

Temporary Amendment of Section. — Section 2 of D.C. Law 14-34 amended subsec. (h) to read as follows:

“(h) District of Columbia Corrections Information Council. —

“(1) Establishment. — There is established a council to be known as the District of Columbia

Corrections Information Council (hereafter referred to as 'CIC').

"(2) Membership. — The CIC shall be composed of 3 members, appointed as follows:

"(A) Two members appointed by the Mayor of the District of Columbia.

"(B) One member to be appointed by the Council of the District of Columbia, by resolution.

"(C) Of the members first appointed, the Mayor shall appoint one member for a one-year term. The other mayoral appointee and the Council appointee shall serve 2-year terms. Thereafter, members shall be appointed for terms of 2 years.

"(D) The Mayor shall designate the Chairperson of the CIC.

"(3) Compensation. — Members of the CIC shall not receive compensation for their service.

"(4) Duties. — The CIC shall:

"(A) Report to the Director of the Bureau of Prisons with advice and information regarding matters affecting the District of Columbia sentenced felon population;

"(B) Conduct comprehensive inspections, unannounced whenever possible, of facilities housing District of Columbia sentenced felons and interview selected staff at each facility;

"(C) Review documents related to the conditions of confinement at each facility housing District of Columbia sentenced felons, including, but not limited to, inmate files and records, inmate grievances, incident reports, disciplinary reports, use of force reports, medical and psychological records, administrative and policy directives of the facility, and logs, records, and other data maintained by the facility; and

"(D) Transmit to the Director of the Bureau of Prisons, the Mayor, the Council, and the Director of the District of Columbia's Department of Corrections the following reports, copies of which shall be made available to the public:

"(i) An annual report on the conditions of confinement of District of Columbia sentenced felons; and

"(ii) A report on each inspection of a facility housing District of Columbia sentenced felons.

"(5) Meetings and hearings. —

"(A) The CIC shall meet as necessary to conduct official business.

"(B) The presence of 2 members shall constitute a quorum necessary for the CIC to take official action.

"(C) The CIC may act by an affirmative vote of at least 2 members.

"(6) Management and support services. —

"(A) The Chief Financial Officer shall provide financial support services and oversight for the CIC using personnel assigned to provide financial support services and oversight for the District of Columbia's Department of Corrections.

"(B) The Chief Procurement Officer shall provide contracting and procurement support ser-

vices and oversight for the CIC using personnel assigned to provide contracting and procurement support services and oversight for the District of Columbia's Department of Corrections. The CIC is authorized to contract with qualified private organizations or individuals for services in accordance with the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.).

"(C) The CIC is authorized to appoint one employee to the Excepted Service established by Title X of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code § 1-609.01 et seq.)."

Section 4(b) of D.C. Law 14-34 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Corrections Information Council Emergency Amendment Act of 2001 (D.C. Act 14-80, July 9, 2001, 48 DCR 6346).

For temporary (90 day) amendment of section, see § 2 of Corrections Information Council Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-136, October 23, 2001, 48 DCR 9915).

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 14-34. — Law 14-34, the "Corrections Information Council Temporary Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-233, which was retained by Council. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 12, 2001, it was assigned Act No. 14-96 and transmitted to both Houses of Congress for its review. D.C. Law 14-34 became effective on October 13, 2001.

Legislative history of Law 14-29. — Law 14-29, the "Corrections Information Council Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-221, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 12, 2001, it was assigned Act No. 14-90 and transmitted to both Houses of Congress for its review. D.C. Law 14-29 became effective on October 13, 2001.

Legislative history of Law 15-62. — Law 15-62, the "District of Columbia Jail Improve-

ment Amendment Act of 2003", was introduced in Council and assigned Bill No. 15-31, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on July 29, 2003, it was assigned Act No. 15-112 and transmitted to both Houses of Congress for its review. D.C. Law 15-62 became effective on January 30, 2004.

Legislative history of Law 18-233. — Law 18-233, the "Corrections Information Council Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-404, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Became law without signature of the Mayor on May 22, 2010, it was assigned Act No. 18-406 and transmitted to both Houses of Congress for its review. D.C. Law 18-233 became effective on October 2, 2010.

Effective date. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National

Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

References in text. — Section 1604(f)(2)(A) of Pub. L. 105-34, 111 Stat. 1099, provided that "section 11201(g)(2)(B)(iii) of the Balanced Budget Act of 1997 shall apply as if the reference in such section to 'December 31, 2003' were a reference to 'December 31, 2001.'"

"This title", referred to in subsec. (g)(4)(C), is title XI of Pub. L. 10-533, Aug. 5, 1997, 111 Stat. 712.

Editor's notes. — Establishment—Community Corrections Facility Siting Advisory Commission, see Mayor's Order 2001-172, November 21, 2001 (48 DCR 11583).

CASE NOTES

In general.

District of Columbia inmates, each of whom committed his crime and was sentenced prior to date when the United States Parole Commission (USPC) took over responsibility from the District of Columbia Parole Board for conducting parole hearings for D.C. Code offenders, properly sued the chairman and the commissioners of the USPC under §§ 1983 in their official capacities, and not the Commission itself, for acts taken by the defendants pursuant to their authority under D.C. Revitalization Act; defendants were alleged to have retroactively applied USPC's own parole guidelines

and practices in violation of the Ex Post Facto Clause of the Constitution. *Sellmon v. Reilly*, 551 F.Supp.2d 66, 2008 U.S. Dist. LEXIS 36082 (2008), appeal dismissed by 2009 U.S. App. LEXIS 11153 (D.C. Cir. Jan. 27, 2009).

Denial of building permits for community correction center pursuant to contract with federal Bureau of Prisons (BOP) did not conflict with and, therefore, was not preempted by federal law; warehouse tenant could comply with zoning regulation and federal law. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

§ 24-101a. District of Columbia Corrections Information Council [Not funded].

[Not funded].

(Aug. 5, 1997, 111 Stat. 734, Pub. L. 105-33, § 11201, as added Oct. 2, 2010, D.C. Law 18-233, § 2(b), 57 DCR 4514.)

Emergency legislation. — For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Congressional Review

Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-233. — For history of Law 18-233, see notes under § 24-101.

Editor's notes. — Section 3 of D.C. Law 18-233 provided: "Sec. 3. Applicability. This act shall apply upon the inclusion of its fiscal effect

in an approved budget and financial plan, but no earlier than June 1, 2011.”

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law

18-233 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 18-233, are not in effect.

§ 24-102. Corrections Trustee.

(a) *Appointment and removal of trustee.* —

(1) *Appointment.* — Pursuant to the Federal Government’s assumption of responsibility for persons convicted of a felony offense under the District of Columbia Official Code, the Attorney General, in consultation with the Chairman of the District of Columbia Financial Responsibility and Management Assistance Authority (hereafter in this chapter referred to as the “D.C. Control Board”), the Mayor of the District of Columbia, the District of Columbia Council, and the District of Columbia judiciary, shall select a Corrections Trustee, who shall be an independent officer of the government of the District of Columbia, to oversee financial operations of the District of Columbia Department of Corrections until the Bureau of Prisons has designated all felony offenders sentenced under the District of Columbia Official Code to a penal or correctional facility operated or contracted for by the Bureau of Prisons under § 24-101.

(2) *Removal.* — The Corrections Trustee may be removed by the Mayor with the concurrence of the Attorney General. The Attorney General shall have the authority to remove the Corrections Trustee for misfeasance or malfeasance in office. At the request of the Corrections Trustee, the District of Columbia Financial Responsibility and Management Assistance Authority may exercise any of its powers and authorities on behalf of the Corrections Trustee.

(b) *Duties of trustee.* — Beginning on the date of appointment and continuing until the felony population sentenced pursuant to the District of Columbia Official Code residing at the Lorton Correctional Complex is transferred to a penal or correctional facility operated or contracted for by the Bureau of Prisons, the Corrections Trustee shall carry out the following responsibilities (notwithstanding any law of the District of Columbia to the contrary):

(1) Exercise financial oversight over the District of Columbia Department of Corrections and allocate funds as enacted in law or as otherwise allocated, including funds for short term improvements which are necessary for the safety and security of staff, inmates and the community.

(2) Purchase any necessary goods or services on behalf of the District of Columbia Department of Corrections consistent with Federal procurement regulations as they apply to the Bureau of Prisons.

(c) *Funding.* —

(1) *In general.* — Funds available for the Corrections Trustee, staff and all necessary and appropriate operations shall be made available to the extent provided in appropriations acts to the Corrections Trustee. Funding requests shall be proposed by the Corrections Trustee to the President and Congress for each Fiscal Year.

(2) *Reimbursement to Bureau of Prison.* — Upon receipt of Federal funds,

the Corrections Trustee shall immediately provide an advance reimbursement to the Bureau of Prisons of all funds identified by the Congress for construction of new prisons and major renovations, which shall remain available until expended. The Bureau of Prisons shall be responsible and accountable for determining how these funds shall be used for renovation and construction, including type, security level, and location of new facilities.

(3) *Accountability and reports.* — The District of Columbia Department of Corrections and the Bureau of Prisons shall maintain accountability for funds reimbursed from the Corrections Trustee, and shall provide expense reports by project at the request of the Corrections Trustee.

(d) *Compensation and detailees.* — The Corrections Trustee shall be compensated at a rate not to exceed the basic pay payable for Level IV of the Executive Schedule. The Corrections Trustee may appoint and fix the pay of additional staff without regard to the provisions of the District of Columbia Code governing appointments and salaries, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates. Upon request of the Corrections Trustee, the head of any Federal department or agency may, on a reimbursable or non reimbursable basis, provide services and detail any personnel of that department or agency to the Corrections Trustee to assist in carrying out his duties.

(e) *Procurement and judicial review.* — The provisions of the District of Columbia Official Code governing procurement shall not apply to the Corrections Trustee. The Corrections Trustee may seek judicial enforcement of his authority to carry out his duties.

(f) *Preservation of retirement and certain other rights of federal employees who become employed by the Corrections Trustee.* —

(1) *In general.* — A Federal employee who, within 3 days after separating from the Federal Government, is appointed Corrections Trustee or becomes employed by the Corrections Trustee.

(A) shall be treated as an employee of the Federal Government for purposes of chapters 83, 84, 87, and 89 of title 5 of the United States Code; and

(B) if, after serving with the Trustee, such employee becomes reemployed by the Federal Government, shall be entitled to credit for the full period of such individual's service with the Trustee, for purposes of determining the applicable leave accrual rate.

(2) *Regulations.* — The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this subsection.

(Aug. 5, 1997, 111 Stat. 737, Pub. L. 105-33, § 11202.)

Prior Codifications. — 1981 Ed., § 24-1202.

Editor's notes. — Sick Leave Buyout for Department of Corrections Employees: Section 8 of Pub. L. 105-274, 112 Stat. 2428, the District of Columbia Courts and Justice Technical Corrections Act of 1998, provided that notwithstanding any provision of District of Columbia

law, the Corrections Trustee appointed pursuant to section 11202 of the Balanced Budget Act of 1997 may set conditions and may provide that an employee of the District of Columbia Department of Corrections who meets such conditions will receive a lump-sum payment for his or her accumulated and accrued sick leave, if the employee is separated involuntarily and

is not subsequently employed, without a break in service of more than 3 days, by the Bureau of Prisons or another Federal agency. The lump sum payment for sick leave shall be calculated by multiplying 50 percent of the employee's rate of basic pay, exclusive of additional pay-

ments of any kind, by the number of hours of accumulated sick leave to the employee's credit at the time of separation. The lump-sum payment shall be considered pay for taxation purposes only and shall not be used to confer any other benefit to the employee.

§ 24-103. Priority consideration for employees of the District of Columbia.

(a) *Establishment.* — As soon as practicable after appointment, the Bureau of Prisons, working with the Corrections Trustee, shall establish a priority consideration program to facilitate employment placement for employees of the District of Columbia Department of Corrections who are scheduled to be separated from service as a result of closing the Lorton Correctional Complex.

(b) *Provisions.* — The priority consideration program shall include provisions under which a vacant federal correctional institution position established as a result of this Act and identified for external hiring shall not be filled by the appointment of any individual from outside of the District of Columbia Department of Corrections if there is available any interested applicant within the District of Columbia Department of Corrections who meets all qualification and suitability requirements for Bureau of Prisons law enforcement positions, including those related to criminal history, educational experience and level of functions, drug use, and work-related misconduct. The priority consideration program shall also include provisions under which an employee described in subsection (a) of this section who has not been appointed to a Federal Bureau of Prisons law enforcement position and who applies for another Federal position in the competitive service shall receive priority consideration and may be given a competitive service appointment noncompetitively to such a competitive service position. The Director of the Bureau of Prisons may provide a relocation allowance to any individual who is hired by the Director under the program established under this section for a position outside of the Washington Metropolitan Area. Such program shall terminate one year after the closing of the Lorton Correctional Complex.

(Aug. 5, 1997, 111 Stat. 738, Pub. L. 105-33, § 11203; Oct. 21, 1998, 112 Stat. 2424, Pub. L. 105-274, §§ 5(a), (b).)

Prior Codifications. — 1981 Ed., § 24-1203.

Effective date. — Section 5(c) of Pub. L. 105-274, 112 Stat. 2424, provided:

“(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

“(2) Individuals who have been appointed with excepted service appointments under sec-

tion 11203(b) of the Balanced Budget Act of 1997 prior to the date of the enactment of this Act shall be converted noncompetitively to competitive service appointments in their current positions.”

References in text. — “This Act,” referred to in (b), is the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105-33, 111 Stat. 712.

§ 24-104. [Reserved].

§ 24-105. Liability for and litigation authority of corrections trustee.

(a) *Liability.* — The District of Columbia shall defend any civil action or proceeding brought in any court or other official Federal, state, or municipal forum against the Corrections Trustee, or against the District of Columbia or it [sic] officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding, if the action or proceeding arises from:

(1) An inmate's confinement with the District of Columbia Department of Corrections;

(2) The District of Columbia's operation or management of the buildings, facilities, or lands comprising the Lorton property; or

(3) The District of Columbia's operations or activities occurring on any property not specifically transferred to the administrative control of the Federal Government pursuant to this chapter.

(b) *Litigation.* —

(1) *Corporation Counsel.* — Subject to paragraph (2) of this subsection, the Corporation Counsel of the District of Columbia shall provide litigation services to the Corrections Trustee, except that the Trustee may instead elect, either generally or in relation to particular cases or classes of cases, to hire necessary staff and personnel or enter into contracts for the provision of litigation services at the Trustee's expense.

(2) *Attorney General.* —

(A) *In general.* — Notwithstanding paragraph (1) of this subsection, with respect to any litigation involving the Corrections Trustee, the Attorney General may:

(i) Direct the litigation of the Trustee, and of the District of Columbia on behalf of the Trustee; and

(ii) Provide on a reimbursable or non-reimbursable basis litigation services for the Trustee at the Trustee's request or on the Attorney General's own initiative.

(B) *Approval of settlement.* — With respect to any litigation involving the Corrections Trustee, the Trustee may not agree to any settlement involving any form of equitable relief without the approval of the Attorney General. The Trustee shall provide to the Attorney General such notice and reports concerning litigation as the Attorney General may direct.

(C) *Discretion.* — Any decision to exercise any authority of the Attorney General under this subsection shall be in the sole discretion of the Attorney General and shall not be reviewable in any court.

(c) *Limitation.* — Nothing in this section shall be construed:

(1) As a waiver of sovereign immunity, or as limiting any other defense or immunity that would otherwise be available to the United States, the District of Columbia, their agencies, officers, employees, or agents; or

(2) To obligate the District of Columbia to represent or indemnify the Corrections Trustee or any officer, employee, or agent where the Trustee (or

any person employed by or acting under the authority of the Trustee) acts beyond the scope of his authority.

(Aug. 5, 1997, 111 Stat. 739, Pub. L. 105-33, § 11205.)

Prior Codifications. — 1981 Ed., § 24-1205.

§ 24-106. Permitting expenditure of funds to carry out certain sewer agreement.

Notwithstanding the fourth sentence of § 1-204.46, the District of Columbia is authorized to obligate or expend such funds as may be necessary during a fiscal year (beginning with fiscal year 1997) to carry out the Sewage Delivery System and Capacity Purchase Agreement between Fairfax County and the District of Columbia with respect to Project Number K00301, without regard to the amount appropriated for such purpose in the budget of the District of Columbia for the fiscal year.

(Aug. 5, 1997, 111 Stat. 740, Pub. L. 105-33, § 11206.)

Prior Codifications. — 1981 Ed., § 24-1206.

Subchapter II. Sentencing.

§ 24-111. Truth in sentencing commission.

(a) *Establishment.* — There is established as an independent agency of the District of Columbia a District of Columbia Truth in Sentencing Commission (hereafter in this chapter referred to as “the Commission”), which shall consist of 7 voting members. The Attorney General, or the Attorney General’s designee, shall be the chairperson of the Commission and shall have the duty to convene meetings of the Commission to ensure that it fulfills its responsibilities under this Act. The members shall serve for the life of the Commission and shall be subject to removal only for neglect of duty, malfeasance in office, or other good cause shown.

(b) *Membership.* — The members of the Commission shall have knowledge and responsibility with respect to criminal justice matters. Two members of the Commission shall be judges of the Superior Court of the District of Columbia, and shall be appointed by the chief judge of that court; one member shall be a representative of the District of Columbia Council and shall be appointed by the chairperson or chairperson pro temp of the Council; one member shall be a representative of the executive branch of the District of Columbia government with official responsibilities for criminal justice matters in the District of Columbia and shall be appointed by the Mayor of the District of Columbia; one member shall be a representative of the District of Columbia Public Defender Service and shall be appointed by the Director of such Service; and one member shall be a representative of the United States Attorney for the District of Columbia and shall be appointed by the United States Attorney. A

representative of the Federal Bureau of Prisons and a representative of the office of Corporation Counsel of the District of Columbia shall each serve as a nonvoting, ex officio member.

(c) *Vacancy*. — Any vacancy in the Commission shall be filled in the same manner as the original appointment. Members of the Commission shall receive no compensation for their services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission, but not in excess of the maximum amounts authorized under section 456 of title 28, United States Code.

(Aug. 5, 1997, 111 Stat. 740, Pub. L. 105-33, § 11211.)

Prior Codifications. — 1981 Ed., § 24-1211. to in (a), is the National Capital Revitalization and Self-Government Improvement Act of

References in text. — “This Act,” referred 1997, title XI of Pub. L. 105-33, 111 Stat. 712.

§ 24-112. General duties, powers, and goals of Commission.

(a) *Recommendations*. — The Commission shall, within 180 days after August 5, 1997, make recommendations to the District of Columbia Council for amendments to the District of Columbia Official Code with respect to the sentences to be imposed for all felonies committed on or after 3 years after August 5, 1997.

(b) *Contents of recommendations*. — Such recommendations shall:

(1) As to all felonies described in subsection (h) of this section, meet the truth in sentencing standards of 20104(a)(1) of the Violent Crime Control and Law Enforcement Act of 1994 [42 U.S.C. § 13704(a)(1)];

(2) As to all felonies ensure that;

(A) An offender will have a sentence imposed that:

(i) Reflects the seriousness of the offense and the criminal history of the offender; and

(ii) Provides for just punishment, affords adequate deterrence to potential future criminal conduct of the offender and others, and provides the offender with needed educational or vocational training, medical care, and other correctional treatment;

(B) Good time shall be calculated pursuant to section 3624 of title 18, United States Code; and

(C) An adequate period of supervision will be imposed to follow release from the imprisonment.

(c) *Death penalty*. — The Commission shall not have the power to recommend a sentence of death for any offense nor for any offense a term of imprisonment less than that prescribed by the D.C. Official Code as a mandatory minimum sentence.

(d) *Other features of recommendations*. — The Commission shall ensure that its recommendations:

(1) Will be neutral as to the race, sex, marital status, ethnic origin, religious affiliation, national origin, creed, socioeconomic status, sexual orien-

tation, and gender identity or expression (as defined in § 2-1401.02(12A)) of offenders;

(2) Will include provisions designed to maximize the effectiveness of the drug court of the Superior Court of the District of Columbia; and

(3) Will be fully consistent with all other provisions of this act, including provisions relating to the administration of probation, parole, and supervised release for District of Columbia Official Code offenders.

(e) *Vote; termination.* — The recommendations of the Commission required under subsections (a) through (d) of this section shall be adopted by a vote of not less than 6 of the members and when made shall be transmitted forthwith to the District of Columbia Council. The Commission shall cease to exist 90 days after the transmittal of recommendations to the Council or on the last date on which timely recommendations may be made if the Commission is unable to agree on such recommendations.

(f) *Recommendations for implementation.* — In fulfilling its responsibilities, the Commission may adopt by a vote of not less than 6 of the members and transmit to the Superior Court of the District of Columbia recommended rules and principles for determining the sentence to be imposed, including:

(1) Whether to impose a sentence of probation, a term of imprisonment and/or a fine, and the amount or length thereof, and including intermediate sanctions in appropriate cases; and

(2) Whether multiple sentences of terms of imprisonment should run concurrently or consecutively.

(g) *Powers.* — The Commission is authorized:

(1) To hold hearings and call witnesses that might assist the Commission in the exercise of its powers;

(2) To perform such other functions as may be necessary to carry out the purposes of this section; and

(3) Except as otherwise provided, to conduct business, exercise powers, and fulfill duties by the vote of a majority of the members present at any meeting.

(h) *Felonies described.* — The felonies described in this subsection are violations of any of the following provisions of law:

(1) The following provisions relating to arson:

(A) Section 22-301.

(B) Section 22-302.

(2) The following provisions relating to felony assault:

(A) Section 22-401.

(B) Section 22-402.

(C) Section 22-403.

(D) Section 22-404.01.

(E) Section 22-405.

(F) Section 22-406.

(3) Section 22-722 (relating to obstruction of justice).

(4) Section 22-1101 (relating to cruelty to children).

(5) Section 22-801 (relating to first degree burglary).

(6) Section 22-2001 (relating to kidnapping).

(7) The following provisions relating to murder and manslaughter:

- (A) Section 22-2101.
- (B) Section 22-2102.
- (C) Section 22-2103.
- (D) Section 22-2104.
- (E) Section 22-2105.
- (F) Section 22-2106.

(8) Section 22-2601 (relating to prison breach).

(9) Section 22-2603 [see now § 22-2632].

(10) Section 22-2801 (relating to robbery).

(11) Section 22-2803 (relating to carjacking).

(12) Chapter 45 of Title 22.

(13) The following provisions relating to sex offenses:

- (A) Section 22-3002.
- (B) Section 22-3003.
- (C) Section 22-3004.
- (D) Section 22-3005.
- (E) Section 22-3008.
- (F) Section 22-3009.
- (G) Section 22-3010.
- (H) Section 22-3013.
- (I) Section 22-3014.
- (J) Section 22-3015.
- (K) Section 22-3016.
- (L) Section 22-3018.
- (M) Section 22-3020.

(14) Section 48-904.01 (relating to recidivist drug offenders), but only in the case of a second or subsequent violation.

(Aug. 5, 1997, 111 Stat. 741, Pub. L. 105-33, § 11212; June 25, 2008, D.C. Law 17-177, § 13, 55 DCR 3696.)

Prior Codifications. — 1981 Ed., § 24-1212.

Effect of amendments. — D.C. Law 17-177, in subsec. (d)(1), substituted “sexual orientation, and gender identity or expression (as defined in § 2-1401.02(12A))” for “and sexual orientation”.

Legislative history of Law 17-177. — Law 17-177, the “Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce

Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

References in text. — “This Act,” referred to in this section, is the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105-33, 111 Stat. 712.

§ 24-113. Data collection.

(a) *Data for Attorney General.* — The Commission, the Superior Court of the District of Columbia, the District of Columbia Department of Corrections, and

other agencies as necessary shall provide to the Attorney General such data as are requested in furtherance of this Act.

(b) *Superior Court.* — The Superior Court of the District of Columbia, in connection with defendants sentenced in such Court, shall provide to the Commission and the Attorney General such data as are requested for planning, statistical analysis or projecting future prison population levels.

(Aug. 5, 1997, 111 Stat. 744, Pub. L. 105-33, § 11213.)

Prior Codifications. — 1981 Ed., § 24-1213. to in (a), is the National Capital Revitalization and Self-Government Improvement Act of

References in text. — “This Act,” referred 1997, title XI of Pub. L. 105-33, 111 Stat. 712.

§ 24-114. Enactment of amendments to District of Columbia Official Code.

If, within 270 days after August 5, 1997, the Council of the District of Columbia has failed to amend the District of Columbia Official Code to enact in whole the recommendations of the Commission under this chapter, or if the Commission fails to make such recommendations within the deadline established under such section, the Attorney General (after consultation with the Commission) shall promulgate within 90 days amendments to the District of Columbia Official Code with respect to the sentences to be imposed for all offenses committed on or after 3 years after August 5, 1997. Such amendments shall be consistent with the standards of subsections (a) through (d) of § 24-112. Such amendments shall take effect 30 days after the Attorney General transmits the recommendations to Congress.

(Aug. 5, 1997, 111 Stat. 744, Pub. L. 105-33, § 11214.)

Prior Codifications. — 1981 Ed., § 24-1214.

Subchapter III. Offender Supervision and Parole.

§ 24-131. Parole.

(a) *Paroling jurisdiction.* —

(1) *Jurisdiction of Parole Commission to grant or deny parole and to impose conditions.* — Not later than one year after August 5, 1997, the United States Parole Commission shall assume the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. The Parole Commission shall have exclusive authority to amend or supplement any regulation interpreting or implementing the parole laws of the District of Columbia with respect to felons, provided that the Commission adheres to the rulemaking procedures set forth in § 4218 [repealed] of title 18, United States Code.

(2) *Jurisdiction of Parole Commission to revoke parole or modify condi-*

tions. — On the date in which the Court Services and Offender Supervision Agency for the District of Columbia is established under § 24-133, the United States Parole Commission shall assume any remaining powers, duties, and jurisdiction of the Board of Parole of the District of Columbia, including jurisdiction to revoke parole and to modify the conditions of parole, with respect to felons.

(3) *Jurisdiction of Superior Court.* — On the date on which the Court Services and Offender Supervision Agency for the District of Columbia is established under § 24-133, the Superior Court of the District of Columbia shall assume the jurisdiction and authority of the Board of Parole of the District of Columbia to grant, deny, and revoke parole, and to impose and modify conditions of parole, with respect to misdemeanants.

(b) *Abolition of the Board of Parole.* — On the date on which the Court Services and Offender Supervision Agency for the District of Columbia is established under § 24-133, the Board of Parole established in the District of Columbia Board of Parole Amendment Act of 1987 shall be abolished.

(c) *Rulemaking and legislative responsibility for parole matter.* — The Parole Commission shall exercise the authority vested in it by this section pursuant to the parole laws and regulations of the District of Columbia, except that the Council of the District of Columbia and the Board of Parole of the District of Columbia may not revise any such laws or regulations (as in effect on August 5, 1997) without the concurrence of the Attorney General.

(Aug. 5, 1997, 111 Stat. 745, Pub. L. 105-33, § 11231; Oct. 21, 1998, 112 Stat. 2426, Pub. L. 105-274, § 7(c)(2)(A).)

Prior Codifications. — 1981 Ed., § 24-1231.

References in text. — The “District of Co-

lumbia Board of Parole Amendment Act of 1987,” referred to in (b), is D.C. Law 7-103, 34 DCR 8279, effective April 8, 1988.

CASE NOTES

ANALYSIS

Authority of commission.

Construction and application.

In general.

Street time.

Authority of commission.

When a Commissioner or Examiner of the United States Parole Commission is acting pursuant to his or her authority under the District of Columbia Revitalization Act, he or she is acting under color of a statute of the District of Columbia and, therefore, is subject to suit in his official capacity for prospective injunctive and declaratory relief under §§ 1983. *Anderson v. Reilly*, 691 F.Supp.2d 89, 2010 U.S. Dist. LEXIS 20715 (2010).

Although the United States Parole Commission has no authority to impose a prison sentence, it has full authority to grant, deny, or revoke a District of Columbia offender's parole, and to impose or modify conditions upon an

order of parole. *Watson v. Gaines*, 589 F.Supp.2d 72, 2008 U.S. Dist. LEXIS 102261 (2008).

Construction and application.

District of Columbia statute governing United States Parole Commission's jurisdiction to revoke or modify parole permitted Commission to forfeit prisoner's credit toward completion of his sentence for time spent on parole each time prisoner's parole was revoked; forfeiture did not increase prisoner's sentence. *Watson v. Gaines*, 589 F.Supp.2d 72, 2008 U.S. Dist. LEXIS 102261 (2008).

In general.

Under District of Columbia law, upon each parole revocation, a petitioner's sentence is not increased, but rather, the United States Parole Commission rescinds credit towards completion of that sentence for time spent on parole. *Hoke v. Waldern*, 587 F.Supp.2d 239, 2008 U.S. Dist. LEXIS 96471 (2008).

As duly authorized paroling authority, United States Parole Commission does not usurp a judicial function when it acts pursuant to the parole laws and regulations of the District of Columbia, and therefore its decisions do not violate separation of powers doctrine. *Leach v. United States Parole Comm'n*, 522 F.Supp.2d 250, 2007 U.S. Dist. LEXIS 87435 (2007).

United States Parole Commission, as the duly authorized paroling authority with respect to District of Columbia felons, did not usurp a judicial function in violation of the separation of powers when it rescinded a prisoner's street-time credit upon each of his parole revocations. *Thompson v. D.C. Dep't of Corr.*, 511 F.Supp.2d 111, 2007 U.S. Dist. LEXIS 70085 (2007), appeal dismissed by 2009 U.S. App. LEXIS 12065 (D.C. Cir. June 3, 2009).

Felony offenders convicted in Superior Court who are parole eligible or under parole supervision must now have their parole decisions made by the U. S. Commission; with the enactment of the Revitalization Act, Congress has taken its delegation of parole authority away, 224 F.Supp.2d 26 (2002).

District of Columbia Code offender who was prosecuted in the Superior Court but is detained in that case in a District of Columbia facility as the result of actions by the federal parole authority should be required to exhaust his District of Columbia habeas remedies before federal district court entertains the challenge to his detention. S. Commission; with the enactment of the Revitalization Act, Congress has taken its delegation of parole authority away, 224 F.Supp.2d 26 (2002).

One purpose of Revitalization Act was to return parole authority over felony offenders in District of Columbia to federal government, while keeping only parole authority over misdemeanor offenders in the Superior Court of the District of Columbia. S. Commission; with the enactment of the Revitalization Act, Congress has taken its delegation of parole authority away, 224 F.Supp.2d 26 (2002).

United States Sentencing Commission was not required to hold parole revocation hearing in deciding whether to reparole District of Columbia prisoner revoked by D.C. Board of Parole on administrative grounds, even though Commission considered criminal charge upon which Board had made no findings; because Board properly revoked prisoner on administrative violation without making findings on criminal charge, prisoner was stripped of his liberty interest in parole, and Commission could consider unresolved criminal charge without violating due process or its regulations. *Sparks v. Gaines*, 144 F.Supp.2d 9, 2001 U.S. Dist. LEXIS 6870 (2001).

Delays in parole and rep parole hearings to permit parole commission to seek additional documentation and information do not give rise to due process problems. *Sparks v. Gaines*, 144 F.Supp.2d 9, 2001 U.S. Dist. LEXIS 6870 (2001).

Street time.

Under District of Columbia law, habeas corpus petitioner did not have a constitutional or statutory right to restoration of street time after parole was revoked, and thus current custody on parole violator warrant was not unlawful. *Hoke v. Waldern*, 587 F.Supp.2d 239, 2008 U.S. Dist. LEXIS 96471 (2008).

§ 24-132. Pretrial services, parole, adult probation and offender supervision trustee.

(a) *Appointment and removal.* —

(1) *Appointment.* — The Attorney General, in consultation with the Chairman of the District of Columbia Financial Responsibility and Management Assistance Authority (hereafter in this section referred to as the "D.C. Control Board") and the Mayor of the District of Columbia, shall appoint a Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee, who shall be an independent officer of the government of the District of Columbia, to effectuate the reorganization and transition of functions and funding relating to pretrial services, defense services, parole, adult probation and offender supervision.

(2) *Removal.* — The Trustee may be removed by the Mayor with the concurrence of the Attorney General. The Attorney General shall have the authority to remove the Trustee for misfeasance or malfeasance in office. At the request of the Trustee, the District of Columbia Financial Responsibility and

Management Assistance Authority may exercise any of its powers and authorities on behalf of the Trustee.

(b) *Authority.* — Beginning on the date of appointment, and continuing until the Court Services and Offender Supervision Agency for the District of Columbia is established under § 24-133, the Trustee shall:

(1) Have the authority to exercise all powers and functions authorized for the Director of the Court Services and Offender Supervision Agency for the District of Columbia;

(2) Have the authority to direct the actions of all agencies of the District of Columbia whose functions will be assumed by or within the Court Services and Offender Supervision Agency for the District of Columbia, and of the Board of Parole of the District of Columbia, including the authority to discharge or replace any officers or employees of these agencies;

(3) Exercise financial oversight over all agencies of the District of Columbia whose functions will be assumed by or within the Court Services and Offender Supervision Agency for the District of Columbia, and over the Board of Parole of the District of Columbia, and allocate funds to these agencies as appropriated by Congress and allocated by the President;

(4) Receive and transmit to the District of Columbia Pretrial Services Agency all funds appropriated for such agency; and

(5) Receive and transmit to the District of Columbia Public Defender Service all funds appropriated for such agency.

(c) *Compensation.* — The Trustee shall be compensated at a rate not to exceed the basic pay payable for Level IV of the Executive Schedule. The Trustee may appoint and fix the pay of additional staff without regard to the provisions of the District of Columbia Official Code governing appointments and salaries, without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code, relating to classification and General Schedule pay rates. Upon request of the Trustee, the head of any Federal department or agency may, on a reimbursable or nonreimbursable basis, provide services and/or detail any personnel of that department or agency to the Trusteeship to assist in carrying out its duties.

(d) *Procurement and judicial review.* — The provisions of the District of Columbia Official Code governing procurement shall not apply to the Trustee. The Trustee may enter into such contracts as the Trustee considers appropriate to carry out the Trustee's duties. The Trustee may seek judicial enforcement of the Trustee's authority to carry out the Trustee's duties.

(e) *Preservation of retirement and certain other rights of federal employee who becomes the Trustee or federal employees who become employed by the Trustee.* —

(1) *In general.* — A Federal employee who, within 3 days after separating from the Federal Government, is appointed Trustee or becomes employed by the Trustee:

(A) Shall be treated as an employee of the Federal Government for purposes of chapters 83, 84, 87, and 89 of Title 5 of the United States Code; and

(B) If, after serving with the Trustee, such employee becomes reemployed by the Federal Government, shall be entitled to credit for the full period of such individual's service with the Trustee, for purposes of determining the applicable leave accrual rate.

(2) *Regulations.* — The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this subsection.

(f) *Treatment as Federal Employees.* —

(1) *In general.* — The Trustee and employees of the Trustee who are not covered under subsection (e) of this section shall be treated as employees of the Federal Government solely for purposes of the following provisions of title 5, United States Code:

(A) Chapter 83 (relating to retirement).

(B) Chapter 84 (relating to the Federal Employees' Retirement System).

(C) Chapter 87 (relating to life insurance).

(D) Chapter 89 (relating to health insurance).

(2) *Effective dates of coverage.* — The effective dates of coverage of the provisions of paragraph (1) of this subsection are as follows:

(A) In the case of the Trustee and employees of the Office of the Trustee and the Office of Adult Probation, August 5, 1997, or the date of appointment, whichever is later.

(B) In the case of employees of the Office of Parole, October 11, 1998, or the date of appointment, whichever is later.

(C) In the case of employees of the Pretrial Services Agency, January 3, 1999, or the date of appointment, whichever is later.

(3) *Rate of contributions.* — The Trustee shall make contributions under the provisions referred to in paragraph (1) of this subsection at the same rates applicable to agencies of the Federal Government.

(4) *Regulations.* — The Office of Personnel Management shall issue such regulations as are necessary to carry out this subsection.

(g) *Funding.* — Funds available for operations of the Trustee shall be made available to the extent provided in appropriations acts to the Trustee, through the State Justice Institute. Funding requests shall be proposed by the Trustee to the President and Congress for each Fiscal Year.

(h) *Liability and litigation authority.* —

(1) *Liability.* — The District of Columbia shall defend any civil action or proceeding brought in any court or other official Federal, state, or municipal forum against the Trustee, or against the District of Columbia or its officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding, if the action or proceeding arises from the:

(A) Supervision of offenders on probation, parole, or supervised release;

(B) Provision of pretrial services by the District of Columbia; or

(C) Activities of the District of Columbia Board of Parole.

(2) *Litigation.* —

(A) *D.C. Attorney General.* — Subject to subparagraph (B) of this paragraph, the Corporation Counsel of the District of Columbia shall provide litigation services to the Trustee, except that the Trustee may instead elect, either generally or in relation to particular cases or classes of cases, to hire

necessary staff and personnel or enter into contracts for the provision of litigation services at the Trustee's expense.

(B) *U.S. Attorney General.* —

(i) *In general.* — Notwithstanding subparagraph (A) of this paragraph, with respect to any litigation involving the Trustee, the Attorney General may:

(I) Direct the litigation of the Trustee, and of the District of Columbia on behalf of the Trustee; and

(II) Provide on a reimbursable or nonreimbursable basis litigation services for the Trustee at the Trustee's request or on the Attorney General's own initiative.

(ii) *Approval of settlement.* — With respect to any litigation involving the Trustee, the Trustee may not agree to any settlement involving any form of equitable relief without the approval of the Attorney General. The Trustee shall provide to the Attorney General such notice and reports concerning litigation as the Attorney General may direct.

(iii) *Discretion.* — Any decision to exercise any authority of the Attorney General under this paragraph shall be in the sole discretion of the Attorney General and shall not be reviewable in any court.

(3) *Limitations.* — Nothing in this section shall be construed:

(A) As a waiver of sovereign immunity, or as limiting any other defense or immunity that would otherwise be available to the United States, the District of Columbia, their agencies, officers, employees, or agents; or

(B) To obligate the District of Columbia to represent or indemnify the Corrections Trustee or any officer, employee, or agent where the Trustee (or any person employed by or acting under the authority of the Trustee) acts beyond the scope of his authority.

(i) *Certification.* — The Court Services and Offender Supervision Agency for the District of Columbia shall assume its duties pursuant to § 24-133 when, within the period beginning one year after August 5, 1997 and ending three years after August 5, 1997, the Trustee certifies to the Attorney General and the Attorney General concurs that the Agency can carry out the functions described in § 24-133 and the United States Parole Commission can carry out the functions described in § 24-133.

(j) *Exercise of authority on behalf of Public Defender Service.* — At the request of the Director of the District of Columbia Public Defender Service, the Trustee may exercise any of the powers and authorities of the Trustee on behalf of such Service in the same manner and to the same extent as the Trustee may exercise such powers and authorities in relation to any agency described in subsection (b) of this section.

(Aug. 5, 1997, 111 Stat. 746, Pub. L. 105-33, § 11232; Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 7(a)(1), (a)(4), (b), (c)(2)(B); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 145(a).)

Prior Codifications. — 1981 Ed., § 24-1232.

Effect of amendments. — Section 145(a) of Public Law 106-522 redesignated subsecs. (f)

through (i) as subsecs. (g) through (j), respectively, and added subsec. (f), relating to the treatment of certain persons as federal employees.

Section 145(b) of Public Law 106-522 provided: "The amendment made by subsection (a) shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997.

Editor's notes. — Section 166(b) of Public Law 106-113 provided:

AUTHORITY DURING TRANSITION TO FULL OPERATION OF AGENCY.—

"(1) **AUTHORITY OF PRETRIAL SERVICES, PAROLE, ADULT PROBATION AND OFFENDER SUPERVISION TRUSTEE.**— Notwithstanding section 11232(b)(1) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Code, sec. 24-1232(b)(1)), the Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee appointed under section 11232(a) of such Act (hereafter referred to as the 'Trustee') shall, in accordance with section 11232 of such Act, exercise the powers and functions of the

Court Services and Offender Supervision Agency for the District of Columbia (hereafter referred to as the 'Agency') relating to sex offender registration (as granted to the Agency under any District of Columbia law) only upon the Trustee's certification that the Trustee is able to assume such powers and functions.

"(2) **AUTHORITY OF METROPOLITAN POLICE DEPARTMENT.**— During the period that begins on the date of the enactment of the Sex Offender Registration Emergency Act of 1999 and ends on the date the Trustee makes the certification described in paragraph (1), the Metropolitan Police Department of the District of Columbia shall have the authority to carry out any powers and functions relating to sex offender registration that are granted to the Agency or to the Trustee under any District of Columbia law."

CASE NOTES

Parole violator warrants.

Portion of Revitalization Act providing that Trustee for Offender Supervision "shall _____ [h]ave the authority to direct the actions of [, inter alia,] the Board of Parole" did not authorize Trustee to unilaterally promulgate "directive" requiring Board to issue parole violator warrants in situations in which Board's regulations rendered that decision discretionary. D.C. Code 1981, §§ 24-205, 24-1232(b)(2); D.C.Mun.Reg. title 28, §§ 217.3, 217.6. *Teachey v. Carver*, 736 A.2d 998, 1999 D.C. App. LEXIS 196 (1999).

"Directive" unilaterally promulgated by

Trustee for Offender Supervision, requiring Board of Parole to issue parole violator warrants in situations in which Board's regulations rendered that decision discretionary, was subject to requirements of District of Columbia Administrative Procedure Act (DCAPA); "directive" was statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or to describe Board's procedure or practice requirements. D.C. Code 1981, §§ 1-1502(6), 24-205, 24-1232(b)(2); D.C.Mun.Reg. title 28, §§ 217.3, 217.6. *Teachey v. Carver*, 736 A.2d 998, 1999 D.C. App. LEXIS 196 (1999).

§ 24-133. Court Services and Offender Supervision Agency.

(a) *Establishment.* — There is established within the executive branch of the Federal Government the Court Services and Offender Supervision Agency for the District of Columbia (hereafter in this section referred to as the "Agency") which shall assume its duties not less than one year or more than three years after August 5, 1997.

(b) *Director.* —

(1) *Appointment and compensation.* — The Agency shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate, for a term of six years. The Director shall be compensated at the rate prescribed for Level IV of the Executive Schedule, and may be removed from office prior to the expiration of term only for neglect of duty, malfeasance in office, or other good cause shown.

(2) *Powers and duties of Director.* — The Director shall:

(A) Submit annual appropriation requests for the Agency to the Office of Management and Budget;

(B) Determine, in consultation with the Chief Judge of the United

States District Court for the District of Columbia, the Chief Judge of the Superior Court of the District of Columbia, and the Chairman of the United States Parole Commission, uniform supervision and reporting practices for the Agency;

(C) Hire and supervise supervision officers and support staff for the Agency;

(D) Direct the use of funds made available to the Agency;

(E) Enter into such contracts, leases, and cooperative agreements as may be necessary for the performance of the Agency's functions, including contracts for substance abuse and other treatment and rehabilitative programs;

(F) Develop and operate intermediate sanctions programs for sentenced offenders;

(G) Arrange for the supervision of District of Columbia offenders on parole, probation, and supervised release who seek to reside in jurisdictions outside the District of Columbia;

(H) Carry out all functions which have heretofore been carried out by the Social Services Division of the Superior Court relating to supervision of adults subject to protection orders or provision of services for or related to such persons;

(I) Arrange for the supervision of offenders on parole, probation, and supervised release from jurisdictions outside the District of Columbia who seek to reside in the District of Columbia; and

(J) Have the authority to enter into agreements, including the Interstate Compact for Adult Offender Supervision, with any State or group of States in accordance with the Agency's responsibilities under subparagraphs (G) and (I) of this paragraph.

(3) *Acceptance of gifts.* —

(A) *Authority to accept gifts.* — During fiscal years 2006 through 2008, the Director may accept and use gifts in the form of—

(i) in-kind contributions of space and hospitality to support offender and defendant programs; and

(ii) equipment and vocational training services to educate and train offenders and defendants.

(B) *Records.* — The Director shall keep accurate and detailed records of the acceptance and use of any gifts under subparagraph (A) of this paragraph, and shall make such records available for audit and public inspection.

(4) *Reimbursement from District government.* — During fiscal years 2006 through 2008, the Director may accept and use reimbursement from the District government for space and services provided, on a cost reimbursable basis.

(c) *Functions.* —

(1) *In general.* — The Agency shall provide supervision, through qualified supervision officers, for offenders on probation, parole, and supervised release pursuant to the District of Columbia Official Code. The Agency shall carry out its responsibilities on behalf of the court or agency having jurisdiction over the offender being supervised.

(2) *Supervision of released offenders.* — The Agency shall supervise any offender who is released from imprisonment for any term of supervised release imposed by the Superior Court of the District of Columbia. Such offender shall be subject to the authority of the United States Parole Commission until completion of the term of supervised release. The United States Parole Commission shall have and exercise the same authority as is vested in the United States district courts by paragraphs (d) through (i) of § 3583 of title 18, United States Code, except that:

(A) The procedures followed by the Commission in exercising such authority shall be those set forth in chapter 311 [repealed] of title 18, United States Code; and

(B) An extension of a term of supervised release under subsection (e)(2) of § 3583 may only be ordered by the Superior Court upon motion from the Commission.

(3) *Supervision of probationers.* — Subject to appropriations and program availability, the Agency shall supervise all offenders placed on probation by the Superior Court of the District of Columbia. The Agency shall carry out the conditions of release imposed by the Superior Court (including conditions that probationers undergo training, education, therapy, counseling, drug testing, or drug treatment), and shall make such reports to the Superior Court with respect to an individual on probation as the Superior Court may require.

(4) *Supervision of District of Columbia parolees.* — The Agency shall supervise all individuals on parole pursuant to the District of Columbia Official Code. The Agency shall carry out the conditions of release imposed by the United States Parole Commission or, with respect to a misdemeanor, by the Superior Court of the District of Columbia, and shall make such reports to the Commission or Court with respect to an individual on parole supervision as the Commission or Court may require.

(5) *Sex offender registration.* — The Agency shall carry out sex offender registration functions in the District of Columbia, and shall have the authority to exercise all powers and functions relating to sex offender registration that are granted to the Agency under any District of Columbia law.

(d) *Authority of officers.* — The supervision officers of the Agency shall have and exercise the same powers and authority as are granted by law to United States Probation and Pretrial Officers.

(e) *Pretrial Services Agency.* —

(1) *Independent entity.* — The District of Columbia Pretrial Services Agency established by subchapter I of Chapter 13 of Title 23, District of Columbia Official Code, shall function as an independent entity within the Agency.

(2) *Submission on behalf of Pretrial Services.* — The Director of the Agency shall submit, on behalf of the District of Columbia Pretrial Services Agency and with the approval of the Director of the Pretrial Services Agency, an annual appropriation request to the Office of Management and Budget. Such request shall be separate from the request submitted for the Agency.

(3) *Liability of District of Columbia.* — The District of Columbia shall defend any civil action or proceeding brought in any court or other official

Federal, state, or municipal forum against the District of Columbia Pretrial Services Agency or the District of Columbia or its officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding, if the action or proceeding arises from the activities of the District of Columbia Pretrial Services Agency prior to the date on which the Offender Supervision, Defender and Courts Services Agency assumes its duties.

(4) *Litigation.* —

(A) *Attorney General for the District of Columbia.* — Subject to subparagraph (B) of this paragraph, the Attorney General for the District of Columbia shall provide litigation services to the District of Columbia Pretrial Services Agency, except that the District of Columbia Pretrial Services Agency may instead elect, either generally or in relation to particular cases or classes of cases, to hire necessary staff and personnel or enter into contracts for the provision of litigation services at such agency's expense.

(B) *Attorney General.* —

(i) *In general.* — Notwithstanding subparagraph (A) of this paragraph, with respect to any litigation involving the District of Columbia Pretrial Services Agency, the Attorney General may:

(I) Direct the litigation of the agency, and of the District of Columbia on behalf of the agency; and

(II) Provide on a reimbursable or non-reimbursable basis litigation services for the agency at the agency's request or on the Attorney General's own initiative.

(ii) *Approval of settlement.* — With respect to any litigation involving the District of Columbia Pretrial Services Agency, the agency may not agree to any settlement involving any form of equitable relief without the approval of the Attorney General. The agency shall provide to the Attorney General such notice and reports concerning litigation as the Attorney General may direct.

(iii) *Discretion.* — Any decision to exercise any authority of the Attorney General under this paragraph shall be in the sole discretion of the Attorney General and shall not be reviewable in any court.

(f) *Repealed.*

(g) *Authority to use services of volunteers.* —

(1) *In general.* — The Agency (including any independent entity within the Agency) may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Agency except policy-making.

(2) *Applicability of worker's compensation rules to volunteers.* — Any volunteer whose services are accepted pursuant to this subsection shall be considered an employee of the United States Government in providing the services for purposes of chapter 81 of title 5, United States Code (relating to compensation for work injuries) and chapter 11 of title 18, United States Code, relating to corruption and conflicts of interest.

(Aug. 5, 1997, 111 Stat. 748, Pub. L. 105-33, § 11233; Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 7(a)(2), (c)(1), (e)(2)(C); Oct. 21, 1998, 112 Stat. 2681-147, Pub. L. 105-277, § 158(a); Nov. 29, 1999, 113 Stat. 1530, Pub. L.

106-113, § 166(a); Nov. 26, 2002, 116 Stat. 2353, Pub. L. 107-302, § 2; Oct. 16, 2006, 120 Stat. 2026, 2039, Pub. L. 109-356, §§ 115, 301(a); Dec. 26, 2007, 121 Stat. 2042, Pub. L. 110-161, § 825(b).)

Prior Codifications. — 1981 Ed., § 24-1233.

Effect of amendments. — Section 166(a) of Public Law 106-113 added par. (c)(5) relating to sex offender registration.

Public Law 107-302 rewrote subpar. (G) of subsec. (b)(2); made nonsubstantive changes in subpar. (H) of subsec. (b)(2); and added subpars. (I) and (J) to subsec. (b)(2). Prior to amendment, subpar. (G) of subsec. (b)(2) had read as follows: “(G) Arrange for the supervision of District of Columbia paroled offenders in jurisdictions outside the District of Columbia; and”.

Pub. L. 109-356 added subsecs. (b)(3), (b)(4), and (g).

Pub. L. 110-161 repealed subsec. (f) which had read as follows: “(f) Receipt and transmittal of appropriations for Public Defender Service.—The Director of the Agency shall receive and transmit to the District of Columbia Public Defender Service all funds appropriated for such agency.”

Effective date. — Section 825(c) of Pub. L. 110-161 provided that amendments made by this section shall apply with respect to fiscal year 2008 and each succeeding fiscal year.

Editor's notes. — Retirement election for certain former employees of the District of Columbia: Section 3 of Pub. L. 105-274, 112 Stat. 2423, provided:

(a) In general—Notwithstanding any provision of the District of Columbia Code, or of chapter 83 or chapter 84 of title 5, United States Code, a former employee of the District of Columbia who is hired by the Department of Justice, or by the agency established by section 11233(a) of the Balanced Budget Act of 1997 (hereafter in this section referred to as the “Agency”), on or after August 5, 1997, may elect, within 60 days after the issuance of regulations pursuant to subsection (c), or within 60 days of being hired, if later, to be covered by the retirement system of the District of Columbia under which the person was most recently covered. No election under this subsection may be made by a person who is hired more than one year after the date on which the Lorton Correctional Complex is closed, or more than one year after the date on which the Agency assumes its duties, whichever is later.

(b) Period of election—The election authorized by subsection (a) shall remain in force until the employee is no longer employed by the agency in which her or she was employed at the time the election was made.

(c) Regulations—The election authorized by subsection (a) shall be in accordance with reg-

ulations issued by the Office of Personnel Management after consulting with the Department of Justice, the Agency, and the government of the District of Columbia. The government of the District of Columbia shall administer the retirement coverage for any employee making such an election.

Leave for certain former employees of the District of Columbia: Section 4 of Pub. L. 105-274, 112 Stat. 2423, provide: (a) In general—Notwithstanding any provision of law, a former employee of the District of Columbia who is hired by the Department of Justice, or by the agency established by section 11233(a) of the Balanced Budget Act of 1997 (hereafter in this section referred to as the “Agency”), on or after August 5, 1997, shall — (1) in determining the rate of accrual of annual leave under section 6303 of title 5, United States Code, be entitled to credit for service as an employee of the District of Columbia; (2) to the extent that the employee has not used or otherwise been compensated for annual leave accrued as an employee of the District of Columbia, have all such accrued annual leave transferred, in accordance with the procedures established under section 6308 of title 5, United States Code, to the credit of the employee in the new employing agency; and, (3) to the extent the employee has not used or otherwise been compensated for sick leave accrued as an employee of the District of Columbia, have all such accrued sick leave transferred, in accordance with the procedures established under section 6308 of title 5, United States Code, to the credit of the employee in the new employing agency. (b) Termination—Subsection (a) is not applicable to any former employee of the District of Columbia who is hired by the Department of Justice or the Agency more than one year after the date on which the Lorton Correctional Complex is closed, or more than one year after the date on which the Agency assumes its duties, whichever is later.

Complementary Legislation: Ala.—Code 1975, § 15-22-1.1 Alaska—AS 33.36.110, 33.36.130, 33.36.140. Ariz.—A.R.S. §§ 31-467 to 31-467.06. Ark.—A.C.A. §§ 12-51-101 to 12-51-802. Cal.—West's Ann.Cal.Penal Code §§ 11180, 11181. Colo.—West's C.R.S.A. §§ 24-60-2801 to 24-60-2803. Conn.—C.G.S.A. § 54-133. Del.—11 Del.C. §§ 4358, 4359. D.C.—D.C. Official Code, 2001 Ed. § 24-133. Fla.—West's F.S.A. §§ 949.07 to 949.09. Ga.—O.C.G.A. §§ 42-9-80 to 42-9-82. Hawaii—H R S §§ 353B-1 to 353B-5. Idaho—I.C. §§ 20-301, 20-302. Ill.—S.H.A. 45 ILCS 17% to 17%.

Ind.—West’s A.I.C. 11-13-4.5-1 to 11-13-4.5-8. Iowa—I.C.A. §§ 907B.1 to 907B.3. Kan.—K.S.A. 22-4110. Ky.—KRS 439.561 to 439.563, 439.570, 439.575. La.—LSA-R.S. 15:574.31 to 15:574.45. Maine—34-A M.R.S.A. §§ 9871 to 9886. Md.—Code, Correctional Services, §§ 6-201 to 6-215. Mass.—M.G.L.A. c. 121, §§ 127-151C. Mich.—M.C.L.A. §§ 3.1011, 3.1012. Minn.—M.S.A. §§ 243.1605 to 243.1608. Miss.—Code 1972, §§ 47-7-81, 47-7-83, 47-7-85. Mo.—V.A.M.S. §§ 589.500 to 589.569. Mt.—M.C.A. 46-23-1115. Neb.—R.R.S. 1943, §§ 29-2639, 29-2640. Nev.—N.R.S. 213.215. N.H.—RSA 651-A:26 to 651-A:38. N.J.—N.J.S.A. 2A:168-26 to 2A:168-39. N.M.—NMSA 1978, § 31-5-20. N.Y.—McKinney’s Executive

Law, § 259-mm. N.C.—G.S. § 14-190.16. N.D.—NDCC 148-65.4 to 148-65.9. Ohio—R.C. § 5149.21. Okl.—22 Okl.St. Ann. §§ 1091 to 1095. Ore.—ORS §§ 144.600 to 144.605. Pa.—61 Pa.C.S.A. §§ 7111 to 7114. R.I.—Gen.Laws, 1956, §§ 13-9.1-1 to 13-9.1-3. S.C.—Code 1976, §§ 24-21-1100 to 24-21-1220. S.D.—SDCL 24-16A-1. Tenn.—T.C.A. §§ 40-28-401, 40-28-402. Tex.—V.T.C.A., Government Code §§ 510.001 to 510.017. Utah—U.C.A. 1953, 77-28c-101 to 77-28c-105. Vt.—28 V.S.A. §§ 1351 to 1364. Va.—Code 1950, §§ 53.1-176.1 to 53.1-176.3. Wash.—West’s RCWA 9.94A.745 to 9.94A.74505. W.Va.—Code, 28-7-1 to 28-7-4. Wis.—W.S.A. 304.16. Wyo.—Wyo.Stat. Ann. §§ 7-13-422, 7-13-423.

CASE NOTES

ANALYSIS

Immunity.
Jurisdiction.
Supervision of parolees.

Immunity.

Community supervision officers (CSOs), who provided supervision for offenders on probation, parole, and supervised release pursuant to District of Columbia Official Code, were not entitled to absolute immunity in parolee’s Bivens action alleging that CSOs acted improperly with respect to his parole supervision, investigation of alleged violations of conditions of his parole release, and preparation of reports on which United States Parole Commission (USPC) relied in issuing parole violation warrant and revoking his parole, since those acts were investigatory in nature, and therefore were analogous to law enforcement function, rather than adjudicatory in nature or otherwise integral to judicial process. *Johnson v. Williams*, 699 F.Supp.2d 159, 2010 U.S. Dist. LEXIS 30647 (2010), affirmed by 2010 U.S. App. LEXIS 20555 (D.C. Cir. Oct. 1, 2010).

Jurisdiction.

United State Parole Commission’s revoking parolee’s supervised release and imposing sentence did not usurp judicial functions or violate separation-of-powers; his term of supervised release had not expired, Commission had jurisdiction over him pursuant to District of Columbia law, and federal regulations permitted revocation and imposition of sentence. *Taylor v. U.S. Parole Com’n*, 2012 WL 1574423 (2012).

Section 1983 did not apply to suit against community supervision officers (CSOs) in their official capacities who provided supervision for offenders on probation, parole, and supervised release pursuant to District of Columbia Official Code, and thus could not be basis for district court’s jurisdiction, since suit had to be

treated as if it were brought against Court Services and Offender Supervision Agency (CSOSA) directly, and CSOSA was federal government agency. *Johnson v. Williams*, 699 F.Supp.2d 159, 2010 U.S. Dist. LEXIS 30647 (2010), affirmed by 2010 U.S. App. LEXIS 20555 (D.C. Cir. Oct. 1, 2010).

Supervision of parolees.

Petitioner failed to allege facts sufficient to support assertion that Moorish-Americans were disadvantaged by United States Parole Commission’s (USPC) enforcement of District of Columbia’s supervised release statute, as required to state equal protection claim against USPC. *Smallwood v. United States Parole Comm’n*, 777 F.Supp.2d 148, 2011 U.S. Dist. LEXIS 41044 (2011).

United States Parole Commission (USPC) did not violate separation of powers doctrine by issuing, pursuant to District of Columbia’s supervised release statute, warrants for parolee’s arrest or by finding probable cause to believe parolee committed offense as charged, since USPC exercised no judicial function and had no authority to impose prison sentence upon conviction of crime. *Smallwood v. United States Parole Comm’n*, 777 F.Supp.2d 148, 2011 U.S. Dist. LEXIS 41044 (2011).

Court Services and Offender Supervision Agency (CSOSA) for District of Columbia was a federal government entity and, thus, was not a proper defendant in prisoner’s suit under § 1983, even though CSOSA had authority to provide supervision for offenders on probation, parole, and supervised release pursuant to the District of Columbia Official Code. *Cooper v. Johnson*, 652 F.Supp.2d 33, 2009 U.S. Dist. LEXIS 83237 (2009).

United States Parole Commission, via Court Services and Offender Supervision Agency (CSOSA) for District of Columbia, acts within its authority when it collects urine samples

from parolees to monitor drug use. *Leach v. United States Parole Comm'n*, 522 F.Supp.2d 250, 2007 U.S. Dist. LEXIS 87435 (2007).

§ 24-134. Authorization of appropriations.

There are authorized to be appropriated in each fiscal year such sums as may be necessary for the following:

- (1) District of Columbia Pretrial Services Agency.
- (2) Supervision of offenders on probation, parole, or supervised release for offenses under the District of Columbia Official Code.
- (3) Operation of the parole system for offenders convicted of offenses under the District of Columbia Official Code.
- (4) Operation of the Trusteeship described in § 24-132.

(Aug. 5, 1997, 111 Stat. 751, Pub. L. 105-33, § 11234; Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, §§ 6(b)(2), 7(a)(3).)

Prior Codifications. — 1981 Ed., § 24-1234.

Subchapter IV. Special Provisions for Trustees.

§ 24-141. Reemployed annuitant Trustee.

Notwithstanding any other provision of Federal or District of Columbia law applicable to a reemployed annuitant's entitlement to retirement or pension benefits, The Director of the Office of Personnel Management may waive the provisions of § 8344 of title 5 of the United States Code for any reemployed annuitants appointed heretofore or hereafter as a Trustee under § 24-102 or § 24-132, or, at the request of such a Trustee, for any employee of such Trustee.

(Nov. 19, 1997, 111 Stat. 2190, Pub. L. 105-100, § 166.)

Prior Codifications. — 1981 Ed., § 24-1241.

§ 24-142. Exemption from personnel and budget ceilings for Trustees and related agencies.

The Trustees described in §§ 24-102 and 24-132 and the activities and personnel of, and the funds allocated or otherwise available to, the Trustees and the agencies over which the Trustees exercise financial oversight pursuant to those sections, shall not be subject to any general personnel or budget limitations which otherwise apply to the District of Columbia government or its agencies in any appropriations act.

(Aug. 5, 1997, 111 Stat. 763, Pub. L. 105-33, § 11282.)

Prior Codifications. — 1981 Ed., § 24-1242. Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government

Effective date. — Section 11721 of title XI of Improvement Act of 1997, provided that except

as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District gov-

ernment for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

PRISONS AND PRISONERS

CHAPTER 2. PRISONS AND PRISONERS.

Subchapter I. Prisons

PART A

General

Sec.

- 24-201.01. [Repealed].
- 24-201.02. Imprisonment for more than 1 year; jurisdiction over Reformatory prisoners; transfer from penitentiary to Reformatory.
- 24-201.03. Transfer from Jail to Workhouse.
- 24-201.04. Commutation of fine.
- 24-201.05. [Repealed].
- 24-201.06. Release in District.
- 24-201.07. Jail and Washington Asylum combined.
- 24-201.08. Commitments to Washington Asylum and Jail.
- 24-201.09. [Omitted].
- 24-201.10. Detention of United States prisoners in Washington Asylum and Jail.
- 24-201.11. Appointment and supervision of prison personnel.
- 24-201.12. Employment of prisoners.
- 24-201.13. Commitment by Marshal.
- 24-201.14. Delivery of prisoners to Marshal.
- 24-201.15. Accountability for safekeeping of prisoners.
- 24-201.16. Annual report by Superintendent.
- 24-201.17. Execution of judgments in capital cases; failure to make specific appropriation not abolition of position.
- 24-201.18, 24-201.19. [Repealed].
- 24-201.20. [Omitted].
- 24-201.21. Grounds of Jail increased.
- 24-201.22. Payment for subsistence of prisoners.
- 24-201.23. Payment for maintenance of Jail.
- 24-201.24. Reimbursement of United States.
- 24-201.25. Charge against District for care of convicts.
- 24-201.26. Place of imprisonment.
- 24-201.27. Rewards.
- 24-201.28. Discharge and release payments.
- 24-201.29. [Repealed].

PART B

Prison Overcrowding

- 24-201.41 to 24-201.45. [Repealed].

PART C

District of Columbia Jail Inmate Cap

- 24-201.61. Cap on sentenced persons housed at District of Columbia Jail.

PART D

Population Caps and Design Capacity

- 24-201.71. Central Detention Facility requirements.
- 24-201.72. New housing or facilities for use as prisons; rated design capacity.

Subchapter II. Department of Corrections

PART A

General

- 24-211.01. Created.
- 24-211.02. Powers; promulgation of rules.
- 24-211.03. Transfer of duties, powers and materials of Board of Public Welfare.
- 24-211.04. Continuance of regulations.
- 24-211.05. Continuance of prior contracts; prior appropriations.
- 24-211.06. Charge against United States for care of convicts.
- 24-211.07. [Omitted].

PART B

Department of Corrections Employee Mandatory Drug and Alcohol Testing

- 24-211.21. Definitions.
- 24-211.22. Employee testing.
- 24-211.23. Testing methodology.
- 24-211.24. Procedure and employee impact.

PART C

Department of Corrections Criminal Background Investigations

- 24-211.41. Authorization of investigation.

PART D

Limitation on Department of Corrections' Use of Facilities on D.C. General Hospital Campus

- 24-211.61. Limitation on Department of Corrections' use of facilities on D.C. General Hospital Campus.

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- 24-221.01. Educational good time.
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Subchapter I. Prisons.

PART A.

GENERAL.

§ 24-201.01. Place of imprisonment; cumulative sentences; jurisdiction of prosecutions. [Repealed].

Repealed.

(Dec. 23, 1963, 77 Stat. 623, Pub. L. 88-241, § 21.)

Prior Codifications. — 1981 Ed., § 24-401. 1973 Ed., § 24-401.

§ 24-201.02. Imprisonment for more than 1 year; jurisdiction over Reformatory prisoners; transfer from penitentiary to Reformatory.

Whenever any person has been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than 1 year by the court, the imprisonment during the term for which he may have been sentenced or during the residue of said term may be in some suitable jail, or penitentiary, or in the Reformatory of the District of Columbia; and it shall be sufficient for the court to sentence the defendant to imprisonment in the penitentiary without specifying the particular prison or the Reformatory of the District of Columbia and the imprisonment shall be in such penitentiary, jail, or the Reformatory of the District of Columbia as the Attorney General shall from time to time designate; provided, that the Mayor of the District of Columbia is vested with jurisdiction over such male and female prisoners as may be designated by the Attorney General for confinement in the Reformatory of the District of Columbia from the time they are delivered into his custody or into the custody of his authorized Superintendent, deputy, or deputies, and until such prisoners are released or discharged under due process of law; and provided further, that the residue of the term of imprisonment of any person who has prior to July 1, 1916, been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than 1 year by the court may be in the Reformatory of the District of Columbia instead of the penitentiary where such persons may be confined on July 1, 1916, and the Attorney General, when so requested by the Mayor of the District of Columbia, is authorized to, and he shall, deliver into the custody of the Superintendent of said Reformatory or his deputy or deputies any such person confined in any penitentiary in pursuance of any judgment of conviction in and sentence by any court in the District of Columbia, and the Mayor of the District of Columbia is vested with jurisdiction over such prisoners from the time they are delivered into the custody of said Superintendent or his duly authorized deputy or deputies, including the time when they are in transit between such penitentiary and the Reformatory of the District of Columbia, and during the period they are in such Reformatory or until they are released or discharged under due process of law. The Attorney General shall pay the cost of the maintenance of said prisoners so transferred, said payment to be from appropriations for support of convicts, District of Columbia, in like manner as payments are made for the support of District convicts in federal penitentiaries. Nothing herein contained shall be construed as applying to the National Training School for Boys or the National Training School for Girls.

(Sept. 1, 1916, 39 Stat. 711, ch. 433.)

Prior Codifications. — 1981 Ed., § 24-402. 1973 Ed., § 24-402.

References in text. — The National Training School for Boys, referred to in the last sentence of this section, was closed pursuant to an order of the Attorney General, dated May 15, 1968.

The National Training School for Girls, referred to in the last sentence of this section, was terminated by the Act of August 3, 1951, 65 Stat. 154, ch. 291, § 1, which provided that no new commitments to the School should be made after August 3, 1951.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Administration of prisons.
Transfer of prisoners.

Administration of prisons.

The United States Attorney General has statutory authority to designate place of confinement of all persons convicted of crime in courts of District of Columbia and is additionally vested with custody over such persons throughout their entire period of incarceration; thus, person who escapes from facility operated by District of Columbia, such as Lorton Reformatory, escapes from custody of Attorney General. D.C. Code §§ 24-402, 24-425; Act March 3, 1909, 35 Stat. 717; 18 U.S.C. § 1257(2); 18 U.S.C. § 751. *Milhouse v. Levi*, 548 F.2d 357, 1976 U.S. App. LEXIS 5884 (C.A.D.C. 1976).

United States Attorney General had authority to regulate furlough program at Lorton Reformatory in District of Columbia despite passage of District of Columbia Court Reform and Criminal Procedure Act and District of Columbia Self-Government and Reorganization Act, and therefore had authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. 18 U.S.C. §§ 751, 4082, 4082(b, c), (c)(1); 18 U.S.C. § 1257(2); D.C. Code §§ 1-121 et seq., 11-101 et seq., 24-402, 24-425, 24-442; Act March 3, 1909, 35 Stat. 717. *Milhouse v. Levi*, 548 F.2d 357, 1976 U.S. App. LEXIS 5884 (C.A.D.C. 1976).

Congress intended to provide uniform administration of federal and District of Columbia law with respect to control of released prisoners. 18 U.S.C. §§ 4161-4166; D.C. Code 1951, §§ 24-204, 24-206, 24-209, 24-401, 24-402, 24-

405. *Johnson v. Ward*, 278 F.2d 245, 1960 U.S. App. LEXIS 5064 (C.A.D.C. 1960).

Regulation and discipline of prisoners convicted of offenses against United States have been committed to prison authorities. 18 U.S.C. § 4042; D.C. Code 1961, §§ 24-402, 24-442. *Fulwood v. Clemmer*, 206 F.Supp. 370, 1962 U.S. Dist. LEXIS 3754 (D.D.C.1962).

Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another discriminated against prisoner of the other faith in violation of orders of Commissioners of District of Columbia requiring prison officials to make facilities available without regard to race or religion. 18 U.S.C. § 4042; D.C. Code 1961, §§ 24-402, 24-442. *Fulwood v. Clemmer*, 206 F.Supp. 370, 1962 U.S. Dist. LEXIS 3754 (D.D.C.1962).

Transfer of prisoners.

District of Columbia prisoner convicted of offense against United States has no statutory right to be transferred only from District of Columbia correctional system into federal correctional system; transfer power of Attorney General is not so limited under statute permitting Attorney General to designate any available, suitable and appropriate institutions, whether maintained by District of Columbia government, federal government or otherwise, or whether within or without District of Columbia. D.C. Code 1981, §§ 24-402, 24-425. *Vaughn v. United States*, 579 A.2d 170, 1990 D.C. App. LEXIS 179 (1990).

Trial court had jurisdiction over action challenging lawfulness of prisoner's transfer from District of Columbia facility to Texas county facility. D.C. Code 1981, §§ 24-402, 24-425. *Vaughn v. United States*, 579 A.2d 170, 1990 D.C. App. LEXIS 179 (1990).

§ 24-201.03. Transfer from Jail to Workhouse.

The United States District Court for the District of Columbia, Superior Court of the District of Columbia, the Attorney General, and the Superintendent of the Washington Asylum and Jail, when so requested by the Mayor of the District of Columbia, shall deliver into the custody of the Superintendent or the authorized deputy or deputies of said Superintendent of the Workhouse, male and female prisoners sentenced to confinement in said Jail for offenses against the common law or against statutes or ordinances relating to the District of Columbia, and, in the discretion of the United States District Court for the District of Columbia, Superior Court of the District of Columbia, and the Attorney General, male and female prisoners serving sentence in said Jail for offenses against the United States, for such work or services as may be necessary, in the discretion of the Mayor of said District, in connection with the construction, maintenance, and operation of said Workhouse, or the prosecution of any other public work at said institution or in the District of Columbia; provided, that, on the direction of said Mayor, male and female prisoners confined in any existing workhouse existing on March 2, 1911, or in the Washington Asylum and Jail of the District of Columbia shall be delivered into the custody of said Superintendent or the authorized deputy or deputies of said Superintendent aforesaid, to perform similar work or services to those heretofore required of male and female prisoners serving sentences in the District of Columbia Jail; provided further, that, the Mayor of the District of Columbia is hereby vested with jurisdiction over such male and female prisoners from the time they are so delivered into the custody of said Superintendent or the duly authorized deputy or deputies of said Superintendent, including the time when such prisoners are in transit between the District of Columbia and the site acquired for such Workhouse, and during the period such prisoners are on such site or in the District of Columbia until they are released or discharged under due process of law.

(Mar. 2, 1911, 36 Stat. 1002, ch. 192; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 590, Pub. L. 91-358, title I, § 171.)

Prior Codifications. — 1981 Ed., § 24-403. 1973 Ed., § 24-403.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-201.04. Commutation of fine.

In all cases in the District of Columbia where a defendant is sent to jail or to

the Workhouse in default of the payment of a fine he shall be released upon the payment of the balance of the fine due by him after crediting thereon as paid an amount equal to the proportion the time thus served by him in the Jail or Workhouse bears to the whole time he was to serve under the sentence.

(Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 936.)

Prior Codifications. — 1981 Ed., § 24-404. 1973 Ed., § 24-404.

§ 24-201.05. Good conduct deduction. [Repealed].

Repealed.

(Apr. 11, 1987, D.C. Law 6-218, § 9, 34 DCR 484.)

Prior Codifications. — 1981 Ed., § 24-405. legislative history of D.C. Law 6-218, see Historical and Statutory Notes following § 24-1973 Ed., § 24-405. 221.01.
Legislative history of Law 6-218. — For

§ 24-201.06. Release in District.

All inmates of the Workhouse and Reformatory for the District of Columbia shall be returned to and released in said District on the day of the expiration of sentence.

(June 10, 1910, 36 Stat. 464, ch. 282.)

Prior Codifications. — 1981 Ed., § 24-406. 1973 Ed., § 24-406.

§ 24-201.07. Jail and Washington Asylum combined.

The Jail of the District of Columbia and the Washington Asylum of said District shall be combined as 1 institution, known as the Washington Asylum and Jail.

(Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

Prior Codifications. — 1981 Ed., § 24-407. 1973 Ed., § 24-407.

§ 24-201.08. Commitments to Washington Asylum and Jail.

Whenever and wherever authority of law exists to sentence, commit, order committed, or confine any person to or in the Jail of the District of Columbia or the Washington Asylum of said District, said authority shall be exercised by sentence, commitment, order of commitment, or confinement to or in said Washington Asylum and Jail.

(Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

Prior Codifications. — 1981 Ed., § 24-408. 1973 Ed., § 24-408.

CASE NOTES

Custody of prisoners.

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in

surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. D.C. Code 1940, §§ 24-408, 24-413, 24-414. *Tyler v. U.S.*, 193 F.2d 24, 1951 U.S. App. LEXIS 2855 (C.A.D.C. 1951).

§ 24-201.09. Board of Public Welfare to have exclusive management and control of Workhouse, Reformatory, and Washington Asylum and Jail. [Omitted].

Omitted.

§ 24-201.10. Detention of United States prisoners in Washington Asylum and Jail.

The Department of Corrections is hereby authorized and directed to receive and keep in the Washington Asylum and Jail all prisoners committed thereto for offenses against the United States.

(Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

Prior Codifications. — 1981 Ed., § 24-410. 1973 Ed., § 24-410.

References in text. — “Department of Cor-

rections” was substituted for “Board of Public Welfare” pursuant to § 24-211.03.

CASE NOTES

Review of decisions.

Finding that Attorney General’s District of Columbia prisoner designation decisions were reviewable under the Administrative Procedures Act was unnecessary in case in which APA review would only mirror review under the Constitution, and constitutional standards pro-

vided most definitive and securely ascertainable measure of whether prison facilities were available, suitable and appropriate under District of Columbia law. D.C. Code 1981, § 24-425. *United States v. District of Columbia*, 897 F.2d 1152, 1990 U.S. App. LEXIS 2958 (C.A.D.C. 1990).

§ 24-201.11. Appointment and supervision of prison personnel.

The superintendents and all other employees engaged on March 16, 1926, in the operation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail shall after March 16, 1926, be subject to the supervision of the Department of Corrections. Each superintendent shall have the management and control of the institution to which he is appointed and shall be subordinate to the Director of the Department of Corrections. The superintendent and all other employees of each of the institutions enumerated in this section shall be appointed by the Mayor of the District of Columbia upon nomination by the

Department of Corrections and shall be subject to discharge by the Mayor upon recommendation of the Department of Corrections.

(Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7.)

Prior Codifications. — 1981 Ed., § 24-411. 1973 Ed., § 24-411.

References in text. — “Department of Corrections” was substituted for “Board of Public Welfare” pursuant to § 24-211.03.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Supervising authority.

Where police officers, acting as guards at jail, were independently responsible to the same authority as was superintendent of the jail, the police officers were subject to prosecution for offense of negligent escape, and order in arrest

of judgment was improper. Federal Rules of Criminal Procedure, rule 34, 18 U.S.C.; D.C. Code 1940, §§ 4-103, 22-107, 24-409, 24-411, 49-301. *U.S. v. Davis*, 167 F.2d 228, 1948 U.S. App. LEXIS 2429 (1948).

§ 24-201.12. Employment of prisoners.

Persons sentenced to imprisonment in the Jail may be employed at such labor and under such regulations as may be prescribed by the Council of the District of Columbia and the proceeds thereof applied to defray the expenses of the trial and conviction of any such person.

(Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

Section references. — This section is referred to in §§ 24-201.13 and 24-201.22.

Prior Codifications. — 1981 Ed., § 24-412. 1973 Ed., § 24-412.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(211) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-201.13. Commitment by Marshal.

Nothing in §§ 24-201.12 and 24-201.15 shall be construed to impair or

interfere with the authority of the Marshal of the District to commit persons to the Jail or to produce them in open court or before any judicial officer when thereto required.

(Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1193.)

Section references. — This section is referred to in §§ 24-201.14 and 24-201.22.

Prior Codifications. — 1981 Ed., § 24-413. 1973 Ed., § 24-413.

CASE NOTES

Custody of prisoners.

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in

surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. D.C. Code 1940, §§ 24-408, 24-413, 24-414. *Tyler v. U.S.*, 193 F.2d 24, 1951 U.S. App. LEXIS 2855 (C.A.D.C. 1951).

§ 24-201.14. Delivery of prisoners to Marshal.

It shall be the duty of the Superintendent of the Washington Asylum and Jail to receive such prisoners and to deliver them to the Marshal or his duly authorized deputy, on the written request of either, for the purpose of taking them before any court or judicial officer, as provided in § 24-201.13.

(Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1194; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

Section references. — This section is referred to in § 24-201.22.

Prior Codifications. — 1981 Ed., § 24-414. 1973 Ed., § 24-414.

CASE NOTES

Custody of prisoners.

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in

surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. D.C. Code 1940, §§ 24-408, 24-413, 24-414. *Tyler v. U.S.*, 193 F.2d 24, 1951 U.S. App. LEXIS 2855 (C.A.D.C. 1951).

§ 24-201.15. Accountability for safekeeping of prisoners.

The Superintendent of the Washington Asylum and Jail shall be accountable for the safekeeping of all prisoners legally committed thereto.

(Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1191; Mar. 2, 1911, 36 Stat. 1003, ch. 192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

Section references. — This section is referred to in §§ 24-201.13 and 24-201.22.

Prior Codifications. — 1981 Ed., § 24-415. 1973 Ed., § 24-415.

CASE NOTES

In general.

The superintendent of the Washington Asylum is liable for the detention therein of a man brought to the asylum by officers for observation as to his sanity, between the time the superintendent personally learned of such detention and the time he received a proper commitment authorizing the detention. *Zinkhan v. District of Columbia, to Use of Langelotti*, 271 F. 542, 1921 U.S. App. LEXIS 1837 (1921).

Prisoner stated §§ 1983 claim against District of Columbia, on allegations that municipa-

lity acted with deliberate indifference to safety and well-being of prisoner, through policy or custom of not reporting separation orders to ensure that its prisoners would be accepted for transfer at other correctional institutions without problems or delay, that municipality knew that prisoner faced specific danger from particular inmate, and that particular inmate incited other inmates against prisoner to injure him. *Ashford v. Dist. of Columbia*, 306 F.Supp.2d 8, 2004 U.S. Dist. LEXIS 2846 (2004), dismissed by 2006 U.S. Dist. LEXIS 67790 (D.D.C. Sept. 21, 2006).

§ 24-201.16. Annual report by Superintendent.

The Superintendent of the Washington Asylum and Jail shall annually, in the month of November, make a detailed report to the Attorney General.

(Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1197; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

Section references. — This section is referred to in § 24-201.22.

Prior Codifications. — 1981 Ed., § 24-416. 1973 Ed., § 24-416.

§ 24-201.17. Execution of judgments in capital cases; failure to make specific appropriation not abolition of position.

The Superintendent of the Washington Asylum and Jail appointed by the Mayor of the District of Columbia is hereby directed, authorized, and required to execute the judgments of the law prior to March 4, 1923, pronounced and thereafter to be pronounced in the District of Columbia by the courts thereof in all capital cases, and the power prior to March 4, 1923, given to and now vested in such Mayor to appoint such Superintendent and all appointments to the position of such Superintendent made by such Mayor are hereby ratified and confirmed; and any failure on the part of Congress, either prior to or after March 4, 1923, to make a specific appropriation for the salary or compensation of such Superintendent shall not be construed either as an abolition of such position of Superintendent of the Washington Asylum and Jail or as a repeal of the power and authority of such Mayor to appoint such Superintendent.

(Mar. 4, 1923, 42 Stat. 1533, ch. 292.)

Prior Codifications. — 1981 Ed., § 24-417. 1973 Ed., § 24-417.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-201.18. Sale of products of Workhouse and Reformatory. [Repealed].

Repealed.

(June 5, 1920, 41 Stat. 869, ch. 234; Feb. 28, 1923, 42 Stat. 1357, ch. 148, § 1; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 24-418; May 8, 1996, D.C. Law 11-117, § 17(c), (d), 43 DCR 1179.)

Prior Codifications. — 1981 Ed., § 24-418. 1973 Ed., § 24-418.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(212) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-201.19. Sale of gun mountings. [Repealed].

Repealed.

(June 1, 1957, 71 Stat. 45, Pub. L. 85-45, § 1; 1973 Ed., § 24-418a; May 8, 1996, D.C. Law 11-117, § 17(c), (d), 43 DCR 1179.)

Prior Codifications. — 1981 Ed., § 24-418a.

1973 Ed., § 24-418a.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-201.20. Workhouse; Reformatory; Superintendents and all other employees; appointment; discharge; supervision of Board of Public Welfare [Omitted].

Omitted.

§ 24-201.21. Grounds of Jail increased.

The buildings and grounds adjoining the Washington Asylum in the District of Columbia, used prior to June 16, 1880, as a naval and army magazine are added to the grounds of the Washington Asylum and Jail and subjected to the control of the Mayor of the District of Columbia as part of the Asylum until otherwise ordered.

(June 16, 1880, 21 Stat. 270, ch. 235; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

Prior Codifications. — 1981 Ed., § 24-420. 1973 Ed., § 24-420.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-201.22. Payment for subsistence of prisoners.

There shall be allowed and paid by the Attorney General for the subsistence of prisoners in the custody of any marshal of the United States and the Superintendent of the Washington Asylum and Jail in the District of Columbia such sum as it reasonably and actually costs to subsist them. And it shall be the duty of the Attorney General to prescribe such regulations for the government of the marshals and the Superintendent of the Washington Asylum and Jail in the District of Columbia in relation to their duties under §§ 24-201.12 to 24-201.16 and this section as will enable him to determine the actual and reasonable expenses incurred.

(Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1204; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

Prior Codifications. — 1981 Ed., § 24-421. 1973 Ed., § 24-421.

§ 24-201.23. Payment for maintenance of Jail.

All expenses incurred for maintenance of the Jail of the District of Columbia and for support of prisoners therein shall be paid out of the revenues of the District of Columbia, and estimates for such expenses shall each year be

submitted in the annual estimates for the expenses of the government of the District of Columbia.

(Aug. 18, 1894, 28 Stat. 417, ch. 301; June 29, 1922, 42 Stat. 668, ch. 249.)

Prior Codifications. — 1981 Ed., § 24-422. 1973 Ed., § 24-422.

§ 24-201.24. Reimbursement of United States.

The United States shall be reimbursed, as heretofore, for the maintenance of District of Columbia inmates, and all sums paid by such District for such maintenance for the service of the fiscal year 1927 and subsequent fiscal years shall be covered into the Treasury as “miscellaneous receipts.”

(Apr. 29, 1926, 44 Stat. 347, ch. 195, title II.)

Prior Codifications. — 1981 Ed., § 24-423. 1973 Ed., § 24-423.

§ 24-201.25. Charge against District for care of convicts.

The cost of the care and custody of District of Columbia convicts in any federal penitentiary shall be charged against the District of Columbia in quarterly accounts to be rendered by the disbursing officer of said penitentiary; and the amount to be charged against the District of Columbia shall be ascertained by multiplying the average daily number of District of Columbia convicts confined in the penitentiary during the quarter by the per capita cost for all prisoners in such penitentiary for the same quarter but excluding expenses of construction or extraordinary repair of buildings.

(Mar. 3, 1915, 38 Stat. 869, ch. 75, § 1.)

Prior Codifications. — 1981 Ed., § 24-424. 1973 Ed., § 24-424.

§ 24-201.26. Place of imprisonment.

All prisoners convicted in the District of Columbia for any offense, including violations of municipal regulations and ordinances and acts of Congress in the nature of municipal regulations and ordinances, shall be committed, for their terms of imprisonment, and to such types of institutions as the court may direct, to the custody of the Attorney General of the United States or his authorized representative, who shall designate the places of confinements where the sentences of all such persons shall be served. The Attorney General may designate any available, suitable, and appropriate institutions, whether maintained by the District of Columbia government, the federal government, or otherwise, or whether within or without the District of Columbia. The Attorney General is also authorized to order the transfer of any such person from one institution to another if, in his judgment, it shall be for the well-being of the prisoner, or relieve overcrowding or unhealthful conditions in the institution where such prisoner is confined, or for other reasons.

(July 15, 1932, ch. 492, § 11; June 6, 1940, 54 Stat. 244, ch. 254, § 8.)

Section references. — This section is referred to in §§ 24-407 and 24-241.08.

Prior Codifications. — 1981 Ed., § 24-425. 1973 Ed., § 24-425.

CASE NOTES

ANALYSIS

Commitment of prisoners.
Conditions of facilities.
Escape.
Parole.
Review.
Supervision of prisoners.
Transfer of prisoners.

Commitment of prisoners.

United States Attorney General possessed the power to determine the availability, suitability, and appropriateness of District of Columbia correctional facilities for purposes of deciding whether to assign District of Columbia prisoners to District prisons or federal prisons. D.C. Code 1981, § 24-425. *United States v. District of Columbia*, 703 F. Supp. 982, 1988 U.S. Dist. LEXIS 16527 (1988).

District of Columbia's Good Time Credits Act, which reduces minimum sentence of prisoners in District prisons, did not create disadvantaged class of female prisoners in federal prisons, did not discriminate against suspect class or infringe on fundamental right, was rationally related to legitimate government interests, and, therefore, did not violate equal protection rights of female prisoners in federal prisons who had been convicted in district courts; District lacked prisons for women sentenced to terms exceeding one year; and purpose for Act was reduction of overcrowding in District prisons. D.C. Code 1981, §§ 24-425, 24-428 et seq. *Jackson v. Thornburgh*, 702 F. Supp. 9, 1988 U.S. Dist. LEXIS 14047 (1988), affirmed by 907 F.2d 194, 285 U.S. App. D.C. 124, 1990 U.S. App. LEXIS 11232 (1990).

Allegations by female District of Columbia Code offenders who were incarcerated in federal facilities due to the lack of facilities for female offenders within the District of Columbia were insufficient to state equal protection claim against the United States Attorney General and Department of Justice, whose only role was to designate place of confinement for the District of Columbia Code offenders either within District of Columbia or in federal facility; federal defendants could not designate facility in District of Columbia or local environs inasmuch as such facility did not exist, and there was no requirement that federal defendants designate local facility. 42 U.S.C. § 1983; U.S. Const. Amends. 5, 14; D.C. Code 1981, § 24-425. *Pitts v. Meese*, 684 F. Supp. 303, 1987 U.S. Dist. LEXIS 13286 (1987), affirmed by 866 F.2d 1450, 275 U.S. App. D.C. 332, 1989 U.S. App. LEXIS 700 (1989).

Attorney General of the United States was not a proper respondent in prisoner's habeas corpus action that sought his immediate parole release from a non-District correctional facility, even though statutory provision indicated that prisoners were committed to the custody of the Attorney General for designation of their places of confinement. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

Attorney General has custody over all prisoners convicted in the District of Columbia and has unfettered discretion to designate them to prisons maintained by the District of Columbia government or by the federal government. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Conditions of facilities.

Segregative confinement in prison implicates a liberty interest protected by the due process clause only if it imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. U.S. Const. Amends. 5, 14. *Hatch v. District of Columbia*, 184 F.3d 846, 1999 U.S. App. LEXIS 17926 (C.A.D.C. 1999).

Assuming District of Columbia inmate had liberty interest in avoiding segregative confinement, inmate was not afforded due process before his placement in such confinement, where, as to administrative segregation, inmate was not entitled to attend hearing or to present witnesses or evidence, and as to adjustment segregation, inmate was not allowed to have any witnesses, to have writer of disciplinary report testify, or to give any testimony on the record. U.S. Const. Amend. 5. *Hatch v. District of Columbia*, 184 F.3d 846, 1999 U.S. App. LEXIS 17926 (C.A.D.C. 1999).

If inmate has liberty interest in avoiding segregative confinement, minimum procedures required by due process for placing inmate in such confinement include some notice of the charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation; although a hearing need not occur prior to confinement in administrative segregation, it must occur within a reasonable time following an inmate's transfer. U.S. Const. Amends. 5, 14. *Hatch v. District of Columbia*, 184 F.3d 846, 1999 U.S. App. LEXIS 17926 (C.A.D.C. 1999).

If District of Columbia inmate was required to show that D.C. statutes or regulations created an expectation that prisoners would not face administrative segregation absent certain

substantive predicates, to demonstrate liberty interest in avoiding such segregation, inmate made such showing, because D.C. regulations set forth particular findings to be made, required regular review of placement in administrative segregation, and limited terms of those placed in adjustment segregation. U.S.C. Const.Amend. 5; D.C.Mun.Reg. title 28, §§ 505.1-505.3, 505.2(c), 515.1, 521.4, 522.3, 527.1, 527.2, 531.2. *Hatch v. District of Columbia*, 184 F.3d 846, 1999 U.S. App. LEXIS 17926 (C.A.D.C. 1999).

Deprivation in prison implicates liberty interest protected by due process clause only when it imposes atypical and significant hardship on inmate in relation to the most restrictive confinement conditions that prison officials, exercising their administrative authority to ensure institutional safety and good order, routinely impose on inmates serving similar sentences, looking at nature and length of deprivation, as well as length of inmate's sentence. U.S. Const.Amend. 5, 14. *Hatch v. District of Columbia*, 184 F.3d 846, 1999 U.S. App. LEXIS 17926 (C.A.D.C. 1999).

In determining whether deprivation implicates inmate's liberty interest under due process clause, on ground that it imposes atypical and significant hardship on inmate in relation to ordinary incidents of prison life, fact that inmate might face more burdensome conditions at other prisons is relevant only to extent that it is likely both that inmates serving similar sentences actually will be transferred to such prisons and that once transferred they actually would face such conditions. U.S. Const.Amend. 5, 14. *Hatch v. District of Columbia*, 184 F.3d 846, 1999 U.S. App. LEXIS 17926 (C.A.D.C. 1999).

Females, who were convicted of District of Columbia offenses but housed in federal facilities, lacked standing to challenge constitutionality of District of Columbia Good Time Credits Act with respect to treatment of male prisoners in federal facilities. D.C. Code 1981, §§ 24-425 to 24-434. *Jackson v. Thornburgh*, 907 F.2d 194, 1990 U.S. App. LEXIS 11232 (C.A.D.C. 1990).

Prison facilities were so overcrowded that they could not be considered "available," let alone "suitable" or "appropriate" for housing additional prisoners, and therefore, attorney general would be preliminarily enjoined from designating newly sentenced individuals to those facilities until such criteria were satisfied. D.C. Code 1981, § 24-425. *Twelve John Does v. District of Columbia*, 668 F. Supp. 20, 1987 U.S. Dist. LEXIS 8226 (1987), reversed by 841 F.2d 1133, 268 U.S. App. D.C. 308, 1988 U.S. App. LEXIS 3190, 10 Fed. R. Serv. 3d (Callaghan) 1202 (1988).

If it were proven that federal reformatory was a public nuisance, it would not be a suitable place of confinement for persons convicted

of crimes in the District of Columbia courts, and the Attorney General could then properly be enjoined from exceeding his statutory authority in so designating the reformatory. D.C. Code § 24-425. *Board of Supervisors v. United States*, 408 F. Supp. 556, 1976 U.S. Dist. LEXIS 17040 (1976), appeal dismissed without opinion by 551 F.2d 305 (4th Cir. Va. 1977), appeal dismissed without opinion by 551 F.2d 305 (4th Cir. Va. 1977).

Escape.

The United States Attorney General has statutory authority to designate place of confinement of all persons convicted of crime in courts of District of Columbia and is additionally vested with custody over such persons throughout their entire period of incarceration; thus, person who escapes from facility operated by District of Columbia, such as Lorton Reformatory, escapes from custody of Attorney General. D.C. Code §§ 24-402, 24-425; Act March 3, 1909, 35 Stat. 717; 18 U.S.C. § 1257(2); 18 U.S.C. § 751. *Milhouse v. Levi*, 548 F.2d 357, 1976 U.S. App. LEXIS 5884 (C.A.D.C. 1976).

Evidence that defendant was sentenced, upon his conviction of robbery, to the custody of the Attorney General for a specified term, that he served part of his sentence at reformatory, that he was then admitted to a halfway house run by a nonprofit organization operating under a contract with the Department of Corrections, and that, after being told he was to be returned to the reformatory for a "violation," he left the halfway house without permission established an escape from the Attorney General's legal custody to which defendant was remitted at the time of sentence, and which continued even when he was assigned to a facility not under the control of the Department of Justice. 18 U.S.C. § 751(a); D.C. Code § 24-425. *United States v. Taylor*, 485 F.2d 1077, 1973 U.S. App. LEXIS 9117 (C.A.D.C. 1973).

Transfer of physical custody of defendant to a mental hospital from a District of Columbia county jail pursuant to statute authorizing director of the Department of Corrections to make such a transfer was not inconsistent with nor exclusive of the legal custody of the Attorney General, and therefore defendant's escape from such hospital was an escape from the "custody of the Attorney General," within the Federal Escape Act. D.C. Code 1961, §§ 24-302, 24-303(b), 24-425; 18 U.S.C. §§ 751, 4242. *Frazier v. United States*, 339 F.2d 745, 1964 U.S. App. LEXIS 3851 (C.A.D.C. 1964), US Supreme Court certiorari denied by 379 U.S. 948, 85 S. Ct. 446, 13 L. Ed. 2d 545, 1964 U.S. LEXIS 42 (1964).

Escapes by District of Columbia prisoners which occur outside District may be charged under federal prison breach statute. 18 U.S.C. § 751(a); D.C. Code §§ 22-2601, 24-425. *Rivers*

v. United States, 334 A.2d 179, 1975 D.C. App. LEXIS 345 (1975).

Parole.

District of Columbia Code offenders properly incarcerated in federal penitentiaries are subject to parole review before the United States Parole Commission rather than the District of Columbia Parole Board. D.C. Code § 24-425; 18 U.S.C. § 4205(a). *Goode v. Markley*, 603 F.2d 973, 1979 U.S. App. LEXIS 13434 (C.A.D.C. 1979), writ of certiorari denied by 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768, 1980 U.S. LEXIS 798 (1980).

Decision by the United States Parole Commission to disregard a parole hearing originally set by the District of Columbia Board of Parole, prior to transfer into federal system of person convicted in the District of Columbia, was fully within the Commission's power once the inmate fell within the Commission's jurisdiction. D.C. Code 1981, §§ 24-209, 24-425. *Morgan v. District of Columbia*, 618 F. Supp. 754, 1985 U.S. Dist. LEXIS 16643 (1985).

Review.

Finding that Attorney General's District of Columbia prisoner designation decisions were reviewable under the Administrative Procedures Act was unnecessary in case in which APA review would only mirror review under the Constitution, and constitutional standards provided most definitive and securely ascertainable measure of whether prison facilities were available, suitable and appropriate under District of Columbia law. D.C. Code 1981, § 24-425. *United States v. District of Columbia*, 897 F.2d 1152, 1990 U.S. App. LEXIS 2958 (C.A.D.C. 1990).

Under statute explicitly committing prisoner transfer decisions to the discretion of the Attorney General, federal prisoner was not entitled to administrative hearing before his transfer from reformatory to penitentiary. 18 U.S.C. §§ 4082, 4082(b); D.C. Code § 24-425. *Smith v. Saxbe*, 562 F.2d 729, 1977 U.S. App. LEXIS 12773 (C.A.D.C. 1977).

Habeas corpus proceeding by defendant, who alleged that he had been transferred from confinement in Virginia to jail in District of Columbia while petition for appeal in forma pauperis from denial of previous petition for habeas corpus was pending in Court of Appeals for Fourth Circuit in order to hamper such previous habeas corpus proceeding, did not present moot question, and defendant was entitled to hearing at least as to legality of his transfer in view of failure of District of Columbia to controvert defendant's allegations. Supreme Court Rules, rule 49, 18 U.S.C.; D.C. Code 1951, § 24-425; U.S.Ct.App. 4th Cir. Rule 25(1), 18 U.S.C.; 18 U.S.C. § 4162. *Bolden v. Clemmer*,

298 F.2d 306, 1961 U.S. App. LEXIS 3233 (C.A.D.C. 1961).

United States Attorney General's designation of District of Columbia or federal prisons for housing District of Columbia prisoners was subject to judicial review under the Administrative Procedure Act. 5 U.S.C. §§ 706, 706(2)(A, B); D.C. Code 1981, § 24-425. *United States v. District of Columbia*, 703 F. Supp. 982, 1988 U.S. Dist. LEXIS 16527 (1988).

United States Attorney General's determinations as to whether to house District of Columbia prisoners in District prisons or federal prisons was not within exception to judicial review provision of Administrative Procedure Act for actions committed to agency discretion by law, insofar as statute authorizing Attorney General to make such determinations specifically stated that Attorney General was to designate institutions that were available, suitable, and appropriate. D.C. Code 1981, § 24-425; 5 U.S.C. §§ 701(a)(2), 706. *United States v. District of Columbia*, 703 F. Supp. 982, 1988 U.S. Dist. LEXIS 16527 (1988).

District of Columbia statute denying District of Columbia good time credits to District of Columbia prisoners housed in federal prisons because of overcrowding did not impair a fundamental right or deal with a suspect classification, and thus was not subject to strict scrutiny equal protection analysis, but was subject to being struck down unless it bore a rational relationship to a legitimate governmental purpose. D.C. Code 1981, §§ 24-425, 24-428; U.S. Const.Amend. 5. *Moss v. Clark*, 698 F. Supp. 640, 1988 U.S. Dist. LEXIS 11935 (1988), reversed by 886 F.2d 686, 1989 U.S. App. LEXIS 14724 (4th Cir. Va. 1989).

District of Columbia prison inmates have no due process right to hearing before being transferred to another prison. U.S.C. Const.Amend. 5, 14; D.C. Code 1981, § 24-425. *Nowlin v. Director, District of Columbia Dep't of Corrections*, 689 F. Supp. 26, 1988 U.S. Dist. LEXIS 7768 (1988).

Trial court had jurisdiction over action challenging lawfulness of prisoner's transfer from District of Columbia facility to Texas county facility. D.C. Code 1981, §§ 24-402, 24-425. *Vaughn v. United States*, 579 A.2d 170, 1990 D.C. App. LEXIS 179 (1990).

Supervision of prisoners.

United States Attorney General had authority to regulate furlough program at Lorton Reformatory in District of Columbia despite passage of District of Columbia Court Reform and Criminal Procedure Act and District of Columbia Self-Government and Reorganization Act, and therefore had authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. 18 U.S.C. §§ 751, 4082, 4082(b, c), (c)(1); 18

U.S.C. § 1257(2); D.C. Code §§ 1-121 et seq., 11-101 et seq., 24-402, 24-425, 24-442; Act March 3, 1909, 35 Stat. 717. *Milhouse v. Levi*, 548 F.2d 357, 1976 U.S. App. LEXIS 5884 (C.A.D.C. 1976).

Although Attorney General may have custody of prisoners at Lorton Correctional Complex in a narrow technical sense by virtue of statute, such prisoners are in fact governed by rules and regulations promulgated by the District of Columbia government until such time as they may be transferred to a federal prison under the aegis of the bureau of prisons. D.C. Code §§ 24-425, 24-442. *Curry-Bey v. Jackson*, 422 F.Supp. 926, 1976 U.S. Dist. LEXIS 12413 (1976).

If District of Columbia prison officials choose to withhold from inmates at the Lorton Correctional Complex procedural rights which the Supreme Court has clearly held to be matter of discretion, those inmates are bound by that decision for as long as they remain at Lorton and the Attorney General is under no duty to see that such procedural rights are afforded to them. D.C. Code §§ 24-425, 24-442. *Curry-Bey v. Jackson*, 422 F.Supp. 926, 1976 U.S. Dist. LEXIS 12413 (1976).

District of Columbia prisoners are not to be equated with federal prisoners nor are their rights necessarily the same. D.C. Code §§ 24-425, 24-442. *Curry-Bey v. Jackson*, 422 F.Supp. 926, 1976 U.S. Dist. LEXIS 12413 (1976).

Transfer of prisoners.

Attorney General had exclusive discretion to transfer District of Columbia prisoner, and thus District of Columbia corrections officials could not be held liable for prisoner's murder following his transfer to federal penitentiary, where District of Columbia officials played no role in decision to transfer prisoner. *Joyner v. District of Columbia*, 267 F.Supp.2d 15, 2003 U.S. Dist. LEXIS 10131 (2003).

Prisoner's claim for racial discrimination in refusal to transfer him from federal correctional facility to facility of District of Columbia would not lie against officials of District of Columbia Department of Corrections and instead should have been brought against federal officials; from date of his transfer, prisoner had not been in custody of those officials, but rather, was in custody of Attorney General of the United States. 18 U.S.C. § 4082(b); 42 U.S.C. § 1983; D.C. Code 1981, § 24-425. *Welch v. Kelly*, 882 F. Supp. 177, 1995 U.S. Dist. LEXIS 4091 (1995), remanded sub nomine *Welch v. Moore*, 1995 U.S. App. LEXIS 19986 (D.C. Cir. June 19, 1995).

United States Attorney General has unfettered discretion to determine where offenders who have violated the District of Columbia Code serve their prison sentences and to decide

whether and where to transfer them. D.C. Code 1981, § 24-425. *Ali v. United States*, 743 F. Supp. 50, 1990 U.S. Dist. LEXIS 10573 (1990).

Prison inmate had no interest protected from summary deprivation by due process clause in remaining at Virginia prison at which he was originally incarcerated upon conviction of a misdemeanor offense in District of Columbia, under District of Columbia Code, which provides that Attorney General may designate any available institution, whether maintained by District of Columbia, federal government, or otherwise, or within or without district. U.S.C. Const.Amends. 5, 14; D.C. Code 1981, § 24-425. *Nowlin v. Director, District of Columbia Dep't of Corrections*, 689 F. Supp. 26, 1988 U.S. Dist. LEXIS 7768 (1988).

Under D.C. Code 1981, § 24-425, authorizing transfer to federal facility of person convicted of crimes in the District of Columbia, prisoner has no legitimate interest in remaining at the same prison or in the same system throughout his term and, therefore, has no interest protected by the due process clause from summary deprivation. U.S. Const.Amend. 5. *Morgan v. District of Columbia*, 618 F. Supp. 754, 1985 U.S. Dist. LEXIS 16643 (1985).

District of Columbia prisoner convicted of offense against United States has no statutory right to be transferred only from District of Columbia correctional system into federal correctional system; transfer power of Attorney General is not so limited under statute permitting Attorney General to designate any available, suitable and appropriate institutions, whether maintained by District of Columbia government, federal government or otherwise, or whether within or without District of Columbia. D.C. Code 1981, §§ 24-402, 24-425. *Vaughn v. United States*, 579 A.2d 170, 1990 D.C. App. LEXIS 179 (1990).

Attorney General's authority to transfer prisoners from one institution to another is clear and apparently limitless. D.C. Code 1981, § 24-425. *District of Columbia v. Cooper*, 483 A.2d 317, 1984 D.C. App. LEXIS 514 (1984).

Since prisoner's interest in remaining at particular institution is not even protected against intentional invasion, law will not protect it from negligent invasion. D.C. Code 1981, § 24-425; U.S. Const.Amends. 5, 14. *District of Columbia v. Cooper*, 483 A.2d 317, 1984 D.C. App. LEXIS 514 (1984).

Without legitimate expectation that prisoner will remain at particular institution throughout his term, prisoner has no interest protected by due process clause from summary deprivation. D.C. Code 1981, § 24-425; U.S.C. Const.Amends. 5, 14. *District of Columbia v. Cooper*, 483 A.2d 317, 1984 D.C. App. LEXIS 514 (1984).

§ 24-201.27. Rewards.

The Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to provide for the payment of rewards for the capture, or for information leading to the apprehension, of fugitives from District of Columbia penal, correctional, and welfare institutions and of conditional release and parole violators. Funds appropriated pursuant to this section shall be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Mayor of the District of Columbia. No reward money shall be paid to any officer or employee of the Metropolitan Police Department, or of any penal, correctional, or welfare institution, or of any court, legal agency, or other agency closely involved in the criminal justice system.

(Oct. 26, 1973, 87 Stat. 506, Pub. L. 93-140, § 11.)

Prior Codifications. — 1981 Ed., § 24-426. 1973 Ed., § 24-426.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-201.28. Discharge and release payments.

The Mayor of the District of Columbia is authorized to furnish each prisoner upon his release from a penal or correctional institution under the jurisdiction of the government of the District of Columbia with suitable clothing and, in the discretion of the Mayor, a sum of money, which shall not exceed \$100.

(Oct. 26, 1973, 87 Stat. 506, Pub. L. 93-140, § 12.)

Prior Codifications. — 1981 Ed., § 24-427. 1973 Ed., § 24-427.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-201.29. Institutional good time. [Repealed].

Repealed.

(Aug. 20, 1994, D.C. Law 10-151, § 802, 41 DCR 2608.)

Prior Codifications. — 1981 Ed., § 24-428.

Emergency legislation. — For temporary repeal of section, see § 802 (a) of the Omnibus Criminal Justice Reform Emergency Amend-

ment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see His-

torical and Statutory Notes following § 24-221.01.

PART B.

PRISON OVERCROWDING.

§ 24-201.41. Definitions. [Repealed].

Repealed.

(Nov. 14, 1987, D.C. Law 7-43, § 2, 34 DCR 5287; Nov 13, 2003, D.C. Law 15-39, § 1802(a), 50 DCR 5668; Jan. 30, 2004, D.C. Law 15-62, § 7, 50 DCR 6574.)

Prior Codifications. — 1981 Ed., § 24-901.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1802(a) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1802(a) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 7-43. — Law 7-43, the “Prison Overcrowding Emergency Powers Act of 1987,” was introduced in Council and assigned Bill No. 7-177, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 30, 1987 and July 14, 1987, respectively. Signed by the Mayor on July 17, 1987, it was assigned Act No. 7-56 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003,” was introduced in Council and

assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 15-62. — Law 15-62, the “District of Columbia Jail Improvement Amendment Act of 2003,” was introduced in Council and assigned Bill No. 15-31, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on July 29, 2003, it was assigned Act No. 15-112 and transmitted to both Houses of Congress for its review. D.C. Law 15-62 became effective on January 30, 2004.

Short title. — Short title of title XVIII of Law 15-39: Section 1801 of D.C. Law 15-39 provided that title XVIII of the act may be cited as the Department of Corrections Procurement of Jail Bed Space Amendment Act of 2003.

§ 24-201.42. Declaration of state of emergency; reduction of minimum and maximum sentences [Repealed].

Repealed.

(Nov. 14, 1987, D.C. Law 7-43, § 3, 34 DCR 5287; Jan. 30, 2004, D.C. Law 15-62, § 7, 50 DCR 6574.)

Prior Codifications. — 1981 Ed., § 24-902.

Legislative history of Law 7-43. — For legislative history of D.C. Law 7-43, see Historical and Statutory Notes following § 24-201.41.

Legislative history of Law 15-62. — For Law 15-62, see notes following § 24-201.41.

CASE NOTES

Population limit.

District of Columbia failed to establish harm to public by enforcement of consent decree placing lid on population for prison facility, despite claim that it could comply with decree only by releasing prisoners or refusing new prisoners, and thus, District was not entitled to modification of consent decree; there was no showing as to who was in prison system or how long they had left on their sentences, that

previous release of prisoners under Emergency Powers Act had placed public in any danger, or that District would be required to close prison system to new convicts to meet limit. U.S.C. Const.Amend. 8; Fed.R.Civ.Proc. Rule 60(b)(5), 18 U.S.C.; D.C. Code 1981, § 24-901 et seq. Twelve John Does v. District of Columbia, 861 F.2d 295, 1988 U.S. App. LEXIS 15586 (C.A.D.C. 1988).

§ 24-201.43. Termination of state of emergency [Repealed].

Repealed.

(Nov. 14, 1987, D.C. Law 7-43, § 4, 34 DCR 5287; Jan. 30, 2004, D.C. Law 15-62, § 7, 50 DCR 6574.)

Prior Codifications. — 1981 Ed., § 24-903.

Legislative history of Law 7-43. — For legislative history of D.C. Law 7-43, see Historical and Statutory Notes following § 24-201.41.

Legislative history of Law 15-62. — For Law 15-62, see notes following § 24-201.41.

§ 24-201.44. New housing or facilities; rated design capacity [Repealed].

Repealed.

(Nov. 14, 1987, D.C. Law 7-43, § 5, 34 DCR 5287; Nov. 13, 2003, D.C. Law 15-39, § 1802(b), 50 DCR 5668; Jan. 30, 2004, D.C. Law 15-62, § 7, 50 DCR 6574.)

Prior Codifications. — 1981 Ed., § 24-904.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1802(b) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1802(b) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act

of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 7-43. — For legislative history of D.C. Law 7-43, see Historical and Statutory Notes following § 24-201.41.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 24-201.41.

Legislative history of Law 15-62. — For Law 15-62, see notes following § 24-201.41.

§ 24-201.45. Exception [Repealed].

Repealed.

(Nov. 14, 1987, D.C. Law 7-43, § 6, 34 DCR 5287; Nov. 13, 2003, D.C. Law 15-39, § 1802(c), 50 DCR 5668; Jan. 30, 2004, D.C. Law 15-62, § 7, 50 DCR 6574.)

Prior Codifications. — 1981 Ed., § 24-905.

Emergency legislation. — For temporary (90 day) addition of § 24-201.61, see § 3002 of Fiscal Year 2003 Budget Support Emergency

Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 1802(c) of Fiscal Year 2004 Budget

Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1802(c) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 7-43. — For legislative history of D.C. Law 7-43, see Historical and Statutory Notes following § 24-201.41.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 24-201.41.

Legislative history of Law 15-62. — For Law 15-62, see notes following § 24-201.41.

PART C.

DISTRICT OF COLUMBIA JAIL INMATE CAP.

§ 24-201.61. Cap on sentenced persons housed at District of Columbia Jail.

(a) Except as provided in subsection (b) of this section, the number of sentenced persons housed at the District of Columbia Jail (Central Detention Facility) by the Department of Corrections shall not exceed 2,050 at any time.

(b) If the Department of Corrections requires an exemption to the cap on the number of sentenced persons established by subsection (a) of this section, the Mayor shall transmit a resolution requesting an exemption to the Council for a 30-day period of review. The transmitted resolution requesting an exemption shall include the reasons for the exemption, the consequences if the exemption is not approved, and the time the exemption shall be in force. If the Council has not approved or disapproved the resolution requesting an exemption within the 30-day review period, the resolution requesting an exemption shall be deemed disapproved.

(Oct. 1, 2002, D.C. Law 14-190, § 3102, 49 DCR 6968.)

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7,

2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

PART D.

POPULATION CAPS AND DESIGN CAPACITY.

§ 24-201.71. Central Detention Facility requirements.

(a) The number of inmates housed at any one time in the Central Detention Facility shall not exceed the number of persons established by an independent consultant pursuant to subsection (c) of this section.

(b) Within 90 days of January 30, 2004, the Mayor shall develop and submit to the Council for a 30-day period of review, excluding days of Council recess, a plan for establishing the maximum number of inmates that can be housed at any one time within the Central Detention Facility. The plan shall consist of a

contract with an independent consultant, who, upon approval of the plan by the Council, will determine the maximum number of inmates that can be housed at any one time within the Central Detention Facility based upon physical capacity, programming, classification system, and housing plan of the Central Detention Facility. If the Council does not approve or disapprove the plan, by resolution, within the 30-day period, the plan shall be deemed disapproved.

(c) The Mayor shall establish, by rule, the maximum number of inmates to be housed at any one time in the Central Detention Facility. The maximum number shall be determined by an independent consultant contracted with by the Mayor pursuant to the plan approved under subsection (b) of this section.

(d) One year following implementation of the population ceiling pursuant to subsection (a) of this section, the Mayor shall evaluate the results of the Central Detention Facility classification system, housing plan, and population ceiling, and shall propose modifications, if necessary. A copy of the evaluation shall be forwarded to the Council.

(e)(1) The Department of Corrections shall obtain accreditation by the American Correctional Association for the Central Detention Facility within 4 years of January 30, 2004, and shall meet all American Correctional Association requirements for recertification of the facility.

(2) Within 210 days of January 30, 2004, the Mayor shall forward to the Council an implementation plan by which the Department shall achieve accreditation for the Central Detention Facility by the American Correctional Association.

(Jan. 30, 2004, D.C. Law 15-62, § 5, 50 DCR 6574.)

Emergency legislation. — For temporary (90 day) Central Detention facility requirements, see § 4 of Jail Improvement Emergency Amendment Act of 2003 (D.C. Act 15-188, October 24, 2003, 50 DCR 9495).

Legislative history of Law 15-62. — For Law 15-62, see notes following § 24-101.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 16-62, the District of Columbia Jail Improvement

Amendment Act of 2003, see Mayor's Order 2006-53, May 9, 2006 (53 DCR 5305).

Resolutions. — Resolution 15-484, the "Central Detention Facility Plan Emergency Approval Resolution of 2004", was approved March 2, 2004.

Editor's notes. — Section 8 of D.C. Law 15-62 provided: "Sec. 8. Applicability. Section 5(a) shall apply 210 days after the effective date of this act."

§ 24-201.72. New housing or facilities for use as prisons; rated design capacity.

(a) After January 30, 2004, all new housing or facilities purchased, leased, constructed, or converted by the Department for use as a prison, except as provided in subsection (b) of this section, shall have only single occupancy rooms or cells and shall comply with all applicable federal and District of Columbia laws.

(b) Multiple occupancy or dormitory-style housing or facilities may be used in minimum security conditions only; provided, that the housing or facilities meet all applicable American Correctional Association standards related to multiple occupancy housing.

(c) After January 30, 2004, rated design capacity shall not include trailers, modular units, or bed space not designed for prison housing.

(d) In Fiscal Year 2004, the Department shall use not less than \$1.43 million of its appropriated funds to procure, in accordance with the requirements of this section, additional bed space for prisoners who otherwise would be housed within the Central Detention Facility of the D.C. Jail.

(e) For the purposes of this section, the term “rated design capacity” means the actual bed space in a prison facility as certified by the Department of Corrections utilizing the most recent standards established by the American Correctional Association and consistent with applicable federal and District of Columbia laws.

(Jan. 30, 2004, D.C. Law 15-62, § 6, 50 DCR 6574.)

Legislative history of Law 15-62. — For Law 15-62, see notes following § 24-101.

Subchapter II. Department of Corrections.

PART A.

GENERAL.

§ 24-211.01. Created.

There is created in and for the District of Columbia a Department of Corrections to be under the charge of a Director who shall be appointed by the Mayor of the District of Columbia.

(June 27, 1946, 60 Stat. 320, ch. 507, § 1.)

Prior Codifications. — 1981 Ed., § 24-441. 1973 Ed., § 24-441.

Emergency legislation. — For temporary (90 day) addition, see § 3002 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-211.02. Powers; promulgation of rules.

(a) Said Department of Corrections under the general direction and supervision of the Mayor of the District of Columbia shall have charge of the management and regulation of the Workhouse at Occoquan in the State of

Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail, and be responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to such institutions. The Department of Corrections with the approval of the Council of the District of Columbia shall have power to promulgate rules and regulations for the government of such institutions and to establish and conduct industries, farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation.

(b) The Department of Corrections shall:

(1) Provide access to the Central Detention Facility, upon request and appointment, to members of the Corrections Information Council, or their staff, agents, or designees, for the purposes of conducting:

(A) Inspections of all areas accessible to inmates; and

(B) Unmonitored interviews of inmates in areas open to inspection under subparagraph (A) of this paragraph;

(2) Provide to the Council on a quarterly basis all internal reports relating to living conditions in the Central Detention Facility, including inmate grievances, the Crystal report, the monthly report on the Priority One environmental problems and the time to repair, the monthly report of the Environmental Safety Office, the monthly report on temperature control and ventilation, and the monthly report on the jail population that includes the number of people waiting transfer to the federal Bureau of Prisons and the average number of days that inmates waited for transfer;

(3) Initiate and maintain regular afternoon and evening visiting hours at the Central Detention Facility for a minimum of 5 days a week, including Saturdays and Sundays;

(4) Develop and implement a classification system and corresponding housing plan for inmates at the Central Detention Facility;

(5) Return to an inmate, upon the inmate's release from the Central Detention Facility, any personal identification documents collected from the inmate, including driver's licenses, birth certificates, and Social Security cards; and

(6) Not release inmates from the Central Detention Facility between the hours of 10 p.m. and 7 a.m.

(7) If exigent and unusual circumstances exist requiring the release of an inmate during the hours prohibited under paragraph (6) of this subsection, the Department of Corrections shall:

(A) Prior to release, verify that:

(i) The inmate has a residence or other housing that the inmate is able to access and the inmate has agreed, in writing, to access the residence or housing at the time of the inmate's release; or

(ii) A shelter is able and willing to receive the inmate at the time of the inmate's release and the inmate has agreed, in writing, to access the shelter at the time of the inmate's release;

(B) Provide the inmate with the clothing that the inmate wore upon intake to the Central Detention Facility or, if this clothing is not available, other clothing provided by the Department of Corrections; provided, that the clothing is:

- (i) Appropriate for the weather;
- (ii) Not a jumpsuit; and
- (iii) Typical of street clothing worn by citizens in public;

(C) Obtain written verification from the Central Detention Facility's healthcare provider ("provider") that, upon release, the inmate has a 7-day supply of all prescription medications the inmate is to continue taking upon release from custody and that the inmate has received release counseling, if medically recommended, from the provider within the preceding 7 days;

(D) Have provided, within the 7 days prior to release, release counseling to the inmate, if the inmate is a sentenced inmate, on access to benefits and services available in the District to facilitate reentry;

(E) Ensure that the inmate has transportation immediately available upon the inmate's release from the Central Detention Facility to transport the inmate to the housing identified in subparagraph (A) of this paragraph by:

- (i) A member of the Department of Corrections transportation unit;
- (ii) A taxi, at the Department of Corrections' expense; or
- (iii) A friend or family member.

(F) A friend or family member.

(G) Prior to the inmate's release, require that the warden of the Central Detention Facility certify, in writing, that the requirements of this paragraph have been met.

(8) The Department of Corrections shall provide to the Council, on a quarterly basis, a list of all inmates who have been released between the hours of 10 p.m. and 7 a.m. The list shall include the following information for each inmate released:

(A) The exigent and unusual circumstances that resulted in the inmate being released between 10 p.m. and 7 a.m.;

(B) The custody status of the inmate prior to release (e.g., pre-trial detention, sentenced misdemeanor);

(C) The reason for the inmate's release (e.g., completion of sentence, court order);

(D) The date and time the Department of Corrections received the release order from the court or other authority; and

(E) The date and time of the release.

(June 27, 1946, 60 Stat. 320, ch. 507, § 2; Jan. 30, 2004, D.C. Law 15-62, § 4, 50 DCR 6574; July 23, 2010, D.C. Law 18-190, § 2.)

Section references. — This section is referred to in § 24-251.01.

Prior Codifications. — 1981 Ed., § 24-442. 1973 Ed., § 24-442.

Effect of amendments. — D.C. Law 15-62 designated the existing language as subsection (a); and added subsec. (b).

D.C. Law 18-190 added subsecs. (b)(7) and (8).

Temporary Amendment of Section. — Section 2 of D.C. Law 15-30 designated the existing section as subsection (a); and added

subsec. (b) to read as follows: "(b) The Department of Corrections shall provide to the Council on a quarterly basis all internal reports relating to living conditions in the Central Detention Facility, including inmate grievances, the Crystal report, the monthly report on the Priority One environmental problems and the time to repair, the monthly report of the Environmental Safety Office, the monthly report on temperature control and ventilation, and the monthly report on the jail population that includes the number of people waiting transfer to

the federal Bureau of Prisons and the average number of days that inmates waited for transfer."

Section 5(b) of D.C. Law 15-30 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 19-52, in subsec. (b), added "and" to the end of par. (4), substituted a period for "; and" at the end of par. (5), and repealed pars. (6), (7), and (8).

Section 4(b) of D.C. Law 19-52 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Section 2(b) of D.C. Law 19-52 added a section to read as follows:

"Sec. 2a. Processing and release of inmates from the Central Detention Facility.

"(a) The Department of Corrections shall process and release an inmate from the Central Detention Facility within 5 hours of a court order granting his or her release, unless the inmate is to continue in confinement pursuant to another charge or warrant or, for an inmate who has completed his or her sentence, before noon on the inmate's scheduled release date.

"(b) The Department of Corrections shall establish, in coordination with the courts and the United States Marshals Service, procedures to ensure that inmates who have been ordered released by the court are returned to the Central Detention Facility as promptly as possible.

"(c) For an inmate released after 10 p.m., prior to release, the Department of Corrections shall:

"(1) Ensure that:

"(A) The inmate has a residence or other housing that the inmate is able to access and that the inmate has agreed, in writing, to access the residence or other housing at the time of his or her release; or

"(B) A shelter is able and willing to receive the inmate at the time of the inmate's release and that the inmate has agreed, in writing, to access the shelter at the time of his or her release;

"(2) Provide the inmate with the clothing that the inmate wore upon intake to the Central Detention Facility or, if this clothing is not available, other clothing that is:

"(A) Appropriate for the weather;

"(B) Not a jumpsuit; and

"(C) Typical of street clothing worn by citizens in public;

"(3) Obtain written verification from the Central Detention Facility's healthcare provider ('provider') that, upon release, the inmate has a 7-day supply of all prescription medications that the inmate is to continue taking following release from custody and that he or she has received release counseling, if medically recom-

mended, from the provider within the preceding 7 days;

"(4) Have provided, within the 7 days prior to release, release counseling to the inmate, if the inmate is a sentenced inmate, on access to benefits and services available in the District to facilitate reentry;

"(5) Ensure that the inmate has transportation immediately available upon the inmate's release from the Central Detention Facility to transport the inmate to the housing or the shelter identified in paragraph (1) of this subsection provided by:

"(A) A member of the Department of Corrections' transportation unit;

"(B) A taxi, at the Department of Corrections' expense; or

"(C) A friend or family member;

"(6) Provide the inmate with the option of remaining within a Department of Corrections facility for release at 7 a.m.; and

"(7) Require that the warden of the Central Detention Facility certify, in writing, that the requirements of this subsection have been met.

"(d)(1) The Department of Corrections shall maintain an accurate record of the date and time of each inmate's release from the Central Detention Facility that shall be a matter of public record, which may be audited, upon request, by the Inspector General or the District of Columbia Auditor.

"(2) The Department of Corrections shall provide to the Council, on a quarterly basis, a list of all inmates who have been released in violation of this section. The list shall include the following information for each released inmate:

"(A) The custody status of the inmate prior to release, such as, for example, whether the inmate was in pre-trial detention or was a sentenced misdemeanant;

"(B) Whether the inmate's release was because of the completion of his or her sentence or pursuant to a court order;

"(C) The date and time that the Department of Corrections received the release order from the court or other authority; and

"(D) The date and time of the release."

Section 4(b) of D.C. Law 19-52 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 3 of the Lorton Regulations Approval Emergency Amendment Act of 1996 (D.C. Act 11-187, January 25, 1996, 43 DCR 393).

For temporary (90 day) amendment of section, see § 2 of Central Detention Facility Monitoring Emergency Amendment Act of 2003 (D.C. Act 15-76, April 16, 2003, 50 DCR 3637).

For temporary (90 day) amendment of section, see § 2 of Central Detention Facility Monitoring Congressional Review Emergency

Amendment Act of 2003 (D.C. Act 15-132, July 29, 2003, 50 DCR 6847).

For temporary (90 day) amendment of section, see § 3 of Jail Improvement Emergency Amendment Act of 2003 (D.C. Act 15-188, October 24, 2003, 50 DCR 9495).

For temporary (90 day) amendment of section, see § 2(a) of DOC Inmate Processing and Release Emergency Amendment Act of 2011 (D.C. Act 19-129, August 1, 2011, 58 DCR 6784).

For temporary (90 day) addition of section, see § 2(b) of DOC Inmate Processing and Release Emergency Amendment Act of 2011 (D.C. Act 19-129, August 1, 2011, 58 DCR 6784).

For temporary (90 day) amendment of section, see § 2(a) of DOC Inmate Processing and Release Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-196, October 18, 2011, 58 DCR 9164).

For temporary (90 day) addition of section, see § 2(b) of DOC Inmate Processing and Release Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-196, October 18, 2011, 58 DCR 9164).

For temporary (90 day) amendment of section, see § 2(a) of DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary (90 day) amendment of section, see § 2(b) of DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

Legislative history of Law 15-30. — Law 15-30, the “Central Detention Facility Monitoring Temporary Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-237, and was retained by Council. The Bill was adopted on first and second readings on April 1, 2003, and May 6, 2003, respectively. Signed by the Mayor on May 16, 2003, it was

assigned Act No. 15-81 and transmitted to both Houses of Congress for its review. D.C. Law 15-30 became effective on October 4, 2003.

Legislative history of Law 15-62. — For Law 15-62, see notes following § 24-101.

Legislative history of Law 18-190. — Law 18-190, the “Safe Release of Inmates Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-424, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on March 2, 2010, and March 16, 2010, respectively. Enacted without signature by the Mayor on April 8, 2010, it was assigned Act No. 18-379 and transmitted to both Houses of Congress for its review. D.C. Law 18-190 became effective on July 23, 2010.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(213) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Custody, control, and support.

Discipline.

Immunity.

Injunctions.

Jurisdiction.

Mandamus.

Medical care.

Religious practices.

Rules and regulations.

Safekeeping of prisoners.

Custody, control, and support.

Whether guard at Lorton Reformatory breached duty to inmate on theory that guard knew of odor of gas near gas burner under coffee urn yet ordered inmate to light the

burner was jury question, in action against District of Columbia for injuries received. D.C. Code §§ 24-441 to 24-443; Organization Order No. 7, D.C. Code Tit. 1, Appendix III. *Gaither v. District of Columbia*, 333 A.2d 57, 1975 D.C. App. LEXIS 331 (1975).

Discipline.

United States Attorney General had authority to regulate furlough program at Lorton Reformatory in District of Columbia despite passage of District of Columbia Court Reform and Criminal Procedure Act and District of Columbia Self-Government and Reorganization Act, and therefore had authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. 18 U.S.C. §§ 751, 4082, 4082(b, c), (c)(1); 18

U.S.C. § 1257(2); D.C. Code §§ 1-121 et seq., 11-101 et seq., 24-402, 24-425, 24-442; Act March 3, 1909, 35 Stat. 717. *Milhouse v. Levi*, 548 F.2d 357, 1976 U.S. App. LEXIS 5884 (C.A.D.C. 1976).

Regulation and discipline of prisoners convicted of offenses against United States have been committed to prison authorities. 18 U.S.C. § 4042; D.C. Code 1961, §§ 24-402, 24-442. *Fulwood v. Clemmer*, 206 F.Supp. 370, 1962 U.S. Dist. LEXIS 3754 (D.D.C.1962).

Immunity.

Mayor of District of Columbia and acting director of District's Department of Corrections enjoyed absolute immunity from common-law tort suits, and thus inmate's pendant state law claims, in federal civil rights action, based on District of Columbia statute and common-law negligence would be dismissed. 42 U.S.C. § 1983; D.C. Code 1981, § 24-442. *Smith-Bey v. District of Columbia*, 546 F. Supp. 813, 1982 U.S. Dist. LEXIS 15640 (1982).

Injunctions.

It was not settled under District of Columbia law that injunctive relief was authorized by statute providing that Department of Corrections had charge of management and regulation of District prisons, and thus federal district court abused its discretion by exercising supplemental jurisdiction over female inmates' claim for injunctive relief under that statute in action also seeking relief under Fifth and Eighth Amendments and Title IX. U.S.C. Const.Amends. 5, 8; Education Amendments of 1972, § 901 et seq., 20 U.S.C. § 1681 et seq.; 18 U.S.C. § 1367; D.C. Code 1981, § 24-442. *Women Prisoners of the D.C. Dep't of Corrections v. District of Columbia*, 93 F.3d 910, 1996 U.S. App. LEXIS 22389 (C.A.D.C. 1996), writ of certiorari denied by 520 U.S. 1196, 117 S. Ct. 1552, 137 L. Ed. 2d 701, 1997 U.S. LEXIS 2686, 65 U.S.L.W. 3727 (1997).

It was not settled under District of Columbia law that injunctive relief was authorized by statute providing that Department of Corrections has charge of management and regulation of District prisons, and thus, district court would decline to exercise supplemental jurisdiction over Hispanic prisoners' claim for injunctive relief under this statute in action also seeking relief under Eighth Amendment. U.S. Const.Amend. 8; 18 U.S.C. § 1367(c); D.C. Code 1981, § 24-442. *Franklin v. District of Columbia*, 960 F. Supp. 394, 1997 U.S. Dist. LEXIS 5287 (1997), reversed by 163 F.3d 625, 333 U.S. App. D.C. 334, 1998 U.S. App. LEXIS 32514, 42 Fed. R. Serv. 3d (Callaghan) 1013 (1998)supra.

Jurisdiction.

Federal district court had power to consider female inmates' claims that their treatment

violated District of Columbia law; inmates' claims under Fifth and Eighth Amendments and Title IX were substantial enough to confer subject matter on court, and local law claims, relating to adequacy of medical care and fire safety at facility, arose from common nucleus of operative facts with federal claims. U.S.C. Const.Amends. 5, 8; Education Amendments of 1972, § 901 et seq., 20 U.S.C. § 1681 et seq.; 18 U.S.C. § 1367; D.C. Code 1981, § 24-442. *Women Prisoners of the D.C. Dep't of Corrections v. District of Columbia*, 93 F.3d 910, 1996 U.S. App. LEXIS 22389 (C.A.D.C. 1996), writ of certiorari denied by 520 U.S. 1196, 117 S. Ct. 1552, 137 L. Ed. 2d 701, 1997 U.S. LEXIS 2686, 65 U.S.L.W. 3727 (1997).

To the extent that suit by petitioner sentenced for local crimes by the district court and confined in District of Columbia correctional facility located in Virginia would have been proper if brought as federal civil rights action, petitioner could bring action in federal district court rather than in superior court. 42 U.S.C. § 1983; D.C. Code §§ 16-1901, 24-442. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Mere fact that an individual is incarcerated in a prison committed to operation by local officials, and is challenging their actions in the daily administration of that prison, does not preclude the exercise of federal habeas jurisdiction by other federal district courts. 18 U.S.C. § 4082(a, b); D.C. Code §§ 24-423, 24-442; 42 U.S.C. § 1983. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

In civil rights suit challenging jail conditions in the District of Columbia, district court properly exercised supplemental jurisdiction over claim under District of Columbia statute concerning responsibility for care of prisoners, in that claims were so related to claims in action within court's original jurisdiction that they formed part of the same case or controversy, though particular claim was not addressed under the Eighth Amendment, that constitutional claim was not so attenuated and unsubstantial as to be absolutely devoid of merit, claim did not raise novel or complex issue of District of Columbia law, exercise of injunctive relief was explicitly authorized by District of Columbia statute, and District claim did not substantially predominate over constitutional or Title IX claims. U.S.C. Const.Amend. 8; Education Amendments of 1972, § 901(a), 20 U.S.C. § 1681(a); 18 U.S.C. § 1367; D.C. Code 1981, §§ 11-921(a), 24-442. *Women Prisoners of the D.C. Dep't of Corrections v. District of Columbia*, 899 F. Supp. 659, 1995 U.S. Dist. LEXIS 13233 (1995), vacated in part by, remanded by 93 F.3d 910, 320 U.S. App. D.C. 247, 1996 U.S. App. LEXIS 22389 (1996).

It was appropriate for district court to use its equitable powers to enforce District of Colum-

bia statute concerning care of prisoners despite absence of any guidance from District of Columbia Court of Appeals interpreting the statute. D.C. Code 1981, § 24-442. *Women Prisoners of the D.C. Dep't of Corrections v. District of Columbia*, 899 F. Supp. 659, 1995 U.S. Dist. LEXIS 13233 (1995), vacated in part by, remanded by 93 F.3d 910, 320 U.S. App. D.C. 247, 1996 U.S. App. LEXIS 22389 (1996).

Nothing in District of Columbia statute declaring that Department of Corrections shall be responsible for safekeeping, care, protection, instruction and discipline of persons committed to its facilities explicitly curtails equity jurisdiction conferred on court by statute authorizing exercise of injunctive relief, and thus equitable relief is permissible to prevent violations of the prison statute. D.C. Code 1981, §§ 11-921(a), 24-442. *Women Prisoners of the D.C. Dep't of Corrections v. District of Columbia*, 899 F. Supp. 659, 1995 U.S. Dist. LEXIS 13233 (1995), vacated in part by, remanded by 93 F.3d 910, 320 U.S. App. D.C. 247, 1996 U.S. App. LEXIS 22389 (1996).

Mandamus.

Actions of prison authorities, including granting or withdrawal of claimed privileges of prisoners, are not reviewable by the court in "mandamus proceeding" in the absence of specific allegations particularly showing a clear breach of duty by prison administrators. 18 U.S.C. § 294(a); D.C. Code 1951, § 24-442; Reorganization Order No. 34—Department of Corrections, D.C. Code 1951, Supp. VIII, Tit. 1 Appendix. *White v. Clemmer*, 295 F.2d 132, 1961 U.S. App. LEXIS 4340 (C.A.D.C. 1961).

Federal prisoners' pleadings seeking relief in nature of mandamus because of claimed deprivation of civil rights on account of their religion failed to allege with sufficient particularity a basis for redress by court where prison administration had been committed by statute to prison authorities and no breach of their statutory duty had been shown. 18 U.S.C. § 294(a); D.C. Code 1951, § 24-442; Reorganization Order No. 34—Department of Corrections, D.C. Code 1951, Supp. VIII, Tit. 1 Appendix. *White v. Clemmer*, 295 F.2d 132, 1961 U.S. App. LEXIS 4340 (C.A.D.C. 1961).

Medical care.

Federal district court's dismissal of prisoner's complaint, which charged prison officials and mayor with negligence in regard to prisoner's medical care and with failure to adequately train and supervise medical officers, was proper where prisoner had brought essentially the same action two years earlier and he had not appealed from order dismissing such action without prejudice to its being filed in superior court. U.S. Const. Amend. 8; D.C. Code 1973, §§ 11-501(4), 24-442; 18 U.S.C. §§ 1331, 1361.

Redwood v. Council of District of Columbia, 679 F.2d 931, 1982 U.S. App. LEXIS 18876 (C.A.D.C. 1982).

Under District of Columbia statute providing standard of care with respect to prisoners, equitable relief is warranted with respect to failure to provide appropriate obstetrical and gynecological education for women prisoners, where such failure resulted in refusal of medical help resulting in illnesses for which award of damages was no remedy, and in light of fact that prisoners do not have option of finding other doctors. D.C. Code 1981, § 24-442. *Women Prisoners of the D.C. Dep't of Corrections v. District of Columbia*, 899 F. Supp. 659, 1995 U.S. Dist. LEXIS 13233 (1995), vacated in part by, remanded by 93 F.3d 910, 320 U.S. App. D.C. 247, 1996 U.S. App. LEXIS 22389 (1996).

Female prisoners demonstrated that prison officials had deviated from standard of acceptable mental care for women prisoners through deficient and gynecological examinations and testing, inadequate testing for sexually transmitted diseases, inadequate follow-up care, inadequate health education, inadequate prenatal care, inadequate prenatal protocol, and ineffective prenatal education. D.C. Code 1981, § 24-442. *Women Prisoners of the District of Columbia Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634, 1994 U.S. Dist. LEXIS 21779 (1994).

District court would not exercise its discretion to retain jurisdiction on inmate's pendent claim under District of Columbia statute absent legal precedent linking statute, which imposed responsibility for safekeeping, care and protection of inmates, with claims of medical malpractice such as those asserted in support of inmate's § 1983 claims. 42 U.S.C. § 1983; D.C. Code 1981, § 24-442. *Charles v. Kelly*, 790 F. Supp. 344, 1992 U.S. Dist. LEXIS 5627 (1992), appeal dismissed by 1993 U.S. App. LEXIS 5452 (D.C. Cir. Jan. 29, 1993).

District of Columbia's common law and statutory obligation to exercise reasonable care in providing medical services could lawfully be delegated, and the District could not be held liable for medical malpractice committed on prisoner by employees of independent contractor without proof of negligence on the part of its officials or employees. D.C. Code 1981, § 24-442. *Herbert v. District of Columbia*, 716 A.2d 196, 1998 D.C. App. LEXIS 147 (1998).

Witness qualified to testify as expert in field of criminal administration was not qualified to render opinion testimony as to proper administration of CPR to arrestee after suicide attempt; witness' qualifications did not reveal any particular expertise in first aid or in training police officers in first aid, witness' CPR training was no different from that received by most officers, and witness specifically disclaimed any medical expertise in subject. D.C.

Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

Testimony of plaintiffs' expert that police officers negligently treated arrestee once arrestee was discovered hanging in holding cell because of lack of oxygen and other emergency equipment needed to assist in administering mouth-to-mouth resuscitation was insufficient to establish applicable standard of care requisite to recovering for arrestee's wrongful death; although expert testified that he had reviewed booklet published by American Correctional Association Accreditation Program and suicide report by National Center of Institutions and Alternatives, and although expert named police department where he had been police commissioner as having oxygen and ventibreaters available near cell blocks, expert generally did not refer to booklet and suicide report or any other written national standards or authorities as support for opinion. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

One instance of police department with emergency equipment is insufficient to provide factual basis for expert opinion that national standard of care requires police departments to maintain resuscitation equipment. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

Testimony of witness qualified to testify as expert in field of criminal administration that police officers were negligent in failing to immediately commence cardiopulmonary or mouth-to-mouth resuscitation to arrestee who had attempted suicide was alone insufficient to establish applicable standard of care as to the circumstances for and proper administration of CPR, since witness was not qualified as expert in CPR. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

Question whether District of Columbia was negligent in failing to respond properly once police officers discovered arrestee hanging in holding cell could be answered only if jury was informed of recognized standards regarding proper correctional procedures under the circumstances, including expert testimony regarding proper method for administering CPR and circumstances under which it is appropriate. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

Plaintiff's evidence was insufficient to establish that police officers failed to comply with any general requirement to render assistance to arrestee when arrestee attempted suicide by hanging while held in holding cell in District of Columbia traffic division; evidence was clear that officers in traffic division were CPR-trained and commenced continuing series of

actions to assist arrestee as soon as they discovered him. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

Term "restoring consciousness" in District of Columbia Metropolitan Police Department General Order, requiring police officers to immediately endeavor to "restore consciousness" when prisoner is unconscious from any cause, cannot be equated with administering CPR; many circumstances exist in which person is unconscious but nevertheless maintains normal breathing and heart functions. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

District of Columbia Metropolitan Police Department General Order requiring police officers to "immediately endeavor to restore consciousness" when prisoner is unconscious from any cause does not create standard of care beyond common-law duty to exercise reasonable care under the circumstances as to unconscious persons in police custody. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

Religious practices.

Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another discriminated against prisoner of the other faith in violation of orders of Commissioners of District of Columbia requiring prison officials to make facilities available without regard to race or religion. 18 U.S.C. § 4042; D.C. Code 1961, §§ 24-402, 24-442. *Fulwood v. Clemmer*, 206 F.Supp. 370, 1962 U.S. Dist. LEXIS 3754 (D.D.C.1962).

Rules and regulations.

Whether District of Columbia officials, in promulgating service order 5000.1, governing special handling of inmates, and division operations procedure 4090.1, governing maximum security division of correctional services, place substantive limitations on discretion of prison officials to place a prisoner in special handling so as to give rise to a protected liberty interest was for the district court, in the first instance, in prisoner's civil rights suit. D.C. Code 1981, § 24-442; 42 U.S.C. § 1983; U.S. Const. Amends. 5, 14. *Lucas v. Hodges*, 730 F.2d 1493, 1984 U.S. App. LEXIS 24256 (C.A.D.C. 1984), vacated by, remanded by 738 F.2d 1392, 238 U.S. App. D.C. 246, 1984 U.S. App. LEXIS 19680 (1984).

A prisoner may acquire a due process protected liberty interest by virtue of official policy statements or regulations duly promulgated by administrators of the particular institution at which the prisoner is confined and source of liberty interest is not limited to statute or statewide regulations. D.C. Code 1981, § 24-

442; 42 U.S.C. § 1983; U.S. Const. Amends. 5, 14. *Lucas v. Hodges*, 730 F.2d 1493, 1984 U.S. App. LEXIS 24256 (C.A.D.C. 1984), vacated by, remanded by 738 F.2d 1392, 238 U.S. App. D.C. 246, 1984 U.S. App. LEXIS 19680 (1984).

Although Attorney General may have custody of prisoners at Lorton Correctional Complex in a narrow technical sense by virtue of statute, such prisoners are in fact governed by rules and regulations promulgated by the District of Columbia government until such time as they may be transferred to a federal prison under the aegis of the bureau of prisons. D.C. Code §§ 24-425, 24-442. *Curry-Bey v. Jackson*, 422 F.Supp. 926, 1976 U.S. Dist. LEXIS 12413 (1976).

If District of Columbia prison officials choose to withhold from inmates at the Lorton Correctional Complex procedural rights which the Supreme Court has clearly held to be matter of discretion, those inmates are bound by that decision for as long as they remain at Lorton and the Attorney General is under no duty to see that such procedural rights are afforded to them. D.C. Code §§ 24-425, 24-442. *Curry-Bey v. Jackson*, 422 F.Supp. 926, 1976 U.S. Dist. LEXIS 12413 (1976).

Retroactive application to revoked parolees of decision invalidating regulation that purported to preserve "street time" credit after revocation of parole did not violate due process, where decision was not unforeseeable and offenders were on actual notice of possibility that they might lose street time upon revocation of parole; decision at issue did not overrule prior case law, employed accepted principles of statutory interpretation, and followed federal construction of regulation at issue, and federal construction had applied to some local revoked parolees since regulation's adoption, at discretion of the Attorney General. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Frustration of inmates' reasonable expectation of release on date certain, occasioned by recalculation of their sentences, in accordance with judicial construction of relevant statute and regulation, to subtract street time credit from their total credits against sentence, although regrettable, did not rise to level of due process violation, absent other, more tangible prejudice. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Possibility of actual prejudice resulting from retroactive application of decision invalidating regulation that purported to preserve "street time" credit after revocation of parole to parolees whose parole might not have been revoked had Board of Parole known that they would not receive credit for street time did not bar retroactive application of decision at issue on due process grounds, as revocation decision based on a mistake of law by the Board would be

vulnerable to challenge in court for abuse of discretion. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Safekeeping of prisoners.

District of Columbia has duty, not only to train its officers in matters relating to sexual contact between prison guards and inmates, but also to actively devise and implement system of supervision of its first level corrections officers in accordance with law. D.C. Code 1981, § 24-442. *Newby v. District of Columbia*, 59 F.Supp.2d 35, 1999 U.S. Dist. LEXIS 10428 (1999).

District of Columbia's failure to actively supervise improper sexual activities involving entire prison population violated female inmate's civil rights under § 1983 and District of Columbia law. 42 U.S.C. § 1983; D.C. Code 1981, § 24-442. *Newby v. District of Columbia*, 59 F.Supp.2d 35, 1999 U.S. Dist. LEXIS 10428 (1999).

District of Columbia statute concerning safekeeping, care, protection, instruction and discipline of persons committed to Department of Corrections facilities implicitly recognizes common law rule which imposes on prison authorities duty to exercise reasonable care under the circumstances in the protection and safekeeping of prisoners. D.C. Code 1981, § 24-442. *Women Prisoners of the D.C. Dep't of Corrections v. District of Columbia*, 899 F. Supp. 659, 1995 U.S. Dist. LEXIS 13233 (1995), vacated in part by, remanded by 93 F.3d 910, 320 U.S. App. D.C. 247, 1996 U.S. App. LEXIS 22389 (1996).

District of Columbia statute providing that department of correction shall be responsible for the safekeeping, care, protection, instruction, and discipline of persons committed to facilities under its jurisdiction encompasses common-law rule which imposes upon prison authorities and employees duty to exercise reasonable care in protection and safekeeping of prisoners. D.C. Code 1981, § 24-442. *Women Prisoners of the District of Columbia Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634, 1994 U.S. Dist. LEXIS 21779 (1994).

In order to prevail on claim for violation of District of Columbia statute imposing duty on prison authorities to protect prisoners, plaintiff must establish by competent evidence a standard of care, that defendant violated the standard, and that the violation proximately caused injury to the plaintiff; plaintiff must establish lack of proper correctional care by demonstrating with competent expert testimony or other supporting proof that what occurred was negligent deviation from the demonstrated acceptable standard. D.C. Code 1981, § 24-442. *Women Prisoners of the District of Columbia Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634, 1994 U.S. Dist. LEXIS 21779 (1994).

Failure to maintain sprinkler system in prison, failure to test system quarterly, failure to test fire pump annually, leakage of water in basement and culinary area, failure to conduct adequate fire drills, and blocking of sprinklers violated statute requiring department of corrections to provide for safety of prisoners. D.C. Code 1981, § 24-442. *Women Prisoners of the District of Columbia Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634, 1994 U.S. Dist. LEXIS 21779 (1994).

Expert's testimony failed to establish standard for care for District of Columbia in inmate's action to recover for injuries allegedly sustained during prison assault; expert failed to offer any support for his conclusion that District violated a national standard of care to supervise its prisoners in its custody and to keep them in a reasonably safe environment. *Pannell v. District of Columbia*, 829 A.2d 474, 2003 D.C. App. LEXIS 482 (2003).

Where the plaintiff must depend on expert testimony, it is not sufficient for the expert to explain what he or she would have done under similar circumstances, or to declare that defendant violated the national standard of care; on the contrary, the expert must clearly articulate and refer to a standard of care by which the defendant's actions can be measured. *Pannell v. District of Columbia*, 829 A.2d 474, 2003 D.C. App. LEXIS 482 (2003).

Although prison personnel have a duty to exercise due care in protection and safekeeping of prisoners, they are not insurers of an inmate's safety or well-being. D.C. Code 1981, § 24-442. *Herbert v. District of Columbia*, 716 A.2d 196, 1998 D.C. App. LEXIS 147 (1998).

Prison authorities and employees are required to exercise reasonable care in carrying out obligations of safekeeping, care, protection, instruction, and discipline of all persons committed to its institutions. D.C. Code 1981, § 24-442. *Phillips v. District of Columbia*, 714 A.2d 768, 1998 D.C. App. LEXIS 121 (1998).

When District of Columbia prisoner is assaulted by fellow prisoners, District is not ipso facto liable for resulting injuries; injured inmate must show both that District breached its duty to protect him or her from harm and that his or her injuries were proximate result from that breach. D.C. Code 1981, § 24-442. *District of Columbia v. Carmichael*, 577 A.2d 312, 1990 D.C. App. LEXIS 153 (1990).

Common-law principles encompassed by District of Columbia code provision assigning District's Department of Corrections responsibility

for safekeeping of persons in District correctional facilities apply equally to all persons who are under arrest and in custody and control of members of metropolitan police department. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

Police officers were under duty to exercise reasonable care under the circumstances when arrestee attempted to commit suicide while in holding cell under officers' control. D.C. Code 1981, § 24-442. *Toy v. District of Columbia*, 549 A.2d 1, 1988 D.C. App. LEXIS 180 (1988).

In order to protect inmates against unreasonable risk of physical harm, prison administration had duty to inspect overhead ventilation covers often enough, and to secure the bolts with sufficient care, for jury reasonably to conclude that those in charge had done what was reasonable and prudent under the circumstances to assure that the covers remained secure, and if prison officials carried out reasonably frequent and careful shakedowns but did not discover a loose ventilation cover, and were not otherwise aware of it, the District of Columbia would not be liable for negligence if a cover fell causing injury, provided that prison inspectors had left the cover tightly bolted after the last shakedown. D.C. Code 1981, § 24-442. *District of Columbia v. Mitchell*, 533 A.2d 629, 1987 D.C. App. LEXIS 485 (1987).

Statute providing that District of Columbia Department of Corrections is responsible for the safekeeping, care and protection of inmates implicitly recognizes duty of reasonable care under the circumstances, which is the same common-law standard applicable generally in all contexts of alleged negligence, and thus there is no theoretical bar to defense in suit by injured inmate that inmate had assumed the risk or was contributorily negligent. D.C. Code 1981, § 24-442. *District of Columbia v. Mitchell*, 533 A.2d 629, 1987 D.C. App. LEXIS 485 (1987).

Although under statute as well as under common law, prison authorities and employees have duty to exercise reasonable care in protection and safekeeping of prisoners, prison personnel are not insurers of inmates' safety. D.C. Code § 24-442. *Hughes v. District of Columbia*, 425 A.2d 1299, 1981 D.C. App. LEXIS 214 (1981).

District of Columbia and its agents owed person committed to Lorton Reformatory a duty of reasonable and prudent care. D.C. Code § 24-442. *Gaither v. District of Columbia*, 333 A.2d 57, 1975 D.C. App. LEXIS 331 (1975).

§ 24-211.03. Transfer of duties, powers and materials of Board of Public Welfare.

With respect to the said institutions, the Mayor of the District of Columbia

shall succeed to all the powers and authority, and to all the duties and obligations vested in or imposed by law upon the Board of Public Welfare of the District of Columbia. Where powers are vested in or duties are imposed by existing law upon the Director of Public Welfare of the District of Columbia with respect to said institutions, such powers and duties are transferred to and shall be exercised by the Director of the Department of Corrections. The officers and employees and all plant and equipment, official records, furniture, and supplies of the said institutions are hereby transferred to the Department of Corrections.

(June 27, 1946, 60 Stat. 321, ch. 507, § 3.)

Prior Codifications. — 1981 Ed., § 24-443. 1973 Ed., § 24-443.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-211.04. Continuance of regulations.

All rules and regulations promulgated by the Board of Public Welfare with respect to said institutions shall continue in force and effect until amended or repealed by the Council of the District of Columbia.

(June 27, 1946, 60 Stat. 321, ch. 507, § 4.)

Prior Codifications. — 1981 Ed., § 24-444. 1973 Ed., § 24-444.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(213) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-211.05. Continuance of prior contracts; prior appropriations.

No contract for services or supplies made by the Board pursuant to authority granted to it by law shall be invalidated by this enactment and the unexpended balances of all appropriations heretofore or hereafter made for the Board with

respect to said institutions shall become available for use by the Department of Corrections under the direction of the Mayor of the District of Columbia.

(June 27, 1946, 60 Stat. 321, ch. 507, § 5.)

Prior Codifications. — 1981 Ed., § 24-445. 1973 Ed., § 24-445.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-211.06. Charge against United States for care of convicts.

The cost of the care and custody of persons confined in the said institutions charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia shall be charged against the department or agency of the United States primarily responsible for the care and custody of such persons in quarterly accounts to be rendered by the Director of the Department of Finance and Revenue. The amount to be charged for such care and custody shall be ascertained by multiplying the average daily number of such persons so confined during the quarter by the per capita cost for the same quarter for all prisoners in the institution where confined, excluding expenses of construction or extraordinary repair of buildings. The sum so derived shall be credited to the current appropriation for the maintenance and operation of such institutions.

(June 27, 1946, 60 Stat. 321, ch. 507, § 6.)

Prior Codifications. — 1981 Ed., § 24-446. 1973 Ed., § 24-446.

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of Immigration Detainer Compliance Emergency Amendment Act of 2012 (D.C. Act 19-379, June 15, 2012, 59 DCR 7383).

References in text. — Pursuant to the Office of the Chief Financial Officer's "Notice of

Public Interest" published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner's Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

§ 24-211.07. Advances to Director, Department of Corrections [Omitted].

Omitted.

PART B.

DEPARTMENT OF CORRECTIONS EMPLOYEE MANDATORY DRUG
AND ALCOHOL TESTING.

§ 24-211.21. Definitions.

For the purposes of this part, the term:

(1) "Applicant" means all persons who have filed any written employment application forms to work at the Department.

(2) "Council" means the Council of the District of Columbia.

(3) "Department" means the District of Columbia Department of Corrections.

(4) "Director" means the Director of the District of Columbia Department of Corrections.

(5) "High potential risk employee" ("HPR employee") means any Department employee who has inmate care and custody responsibilities or who works within a correctional institution, including any employees and managers who are carried in a law enforcement retirement status.

(6) "Law enforcement retirement status" means any employee who contributes to the 7.5% retirement status category.

(7) "Post-accident employee" means any Department employee who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.

(8) "Random testing" means drug or alcohol testing taken by Department employees at an unspecified time for the purposes of determining whether any Department employees have used drugs or alcohol and, as a result, are unable to satisfactorily perform their employment duties.

(9) "Reasonable suspicion" means a belief by a supervisor that an employee is under the influence of an illegal substance or alcohol to the extent that the employee's ability to perform his or her job is impaired. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral.

(Sept. 20, 1996, D.C. Law 11-158, § 2, 43 DCR 3702.)

Prior Codifications. — 1981 Ed., § 24-448.1.

Temporary Addition of Section. — Temporary addition of subchapter: D.C. Law 11-91 added this subchapter.

Section 7(b) of D.C. Law 11-91 provided that the act shall expire after the 225th day of its having taken effect or on the effective date of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Act of 1995, whichever occurs first.

Emergency legislation. — For temporary addition of subchapter, see §§ 2 through 5 of the Department of Corrections Employee Man-

datory Drug and Alcohol Testing Emergency Act of 1995 (D.C. Act 11-167, November 28, 1995, 42 DCR 6805) and §§ 2 through 5 of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Congressional Review Emergency Act of 1996 (D.C. Act 11-208, February 14, 1996, 43 DCR 794).

Legislative history of Law 11-91. — Law 11-91, the "Department of Corrections Employee Mandatory Drug and Alcohol Testing Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-461. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995,

respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-174 and transmitted to both Houses of Congress for its review. D.C. Law 11-91 became effective on February 27, 1996.

Legislative history of Law 11-158. — Law 11-158, the “Department of Corrections Employee Mandatory Drug and Alcohol Testing Act of 1996,” was introduced in Council and as-

signed Bill No. 11-463, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-287 and transmitted to both Houses of Congress for its review. D.C. Law 11-158 became effective on September 20, 1996.

§ 24-211.22. Employee testing.

(a) The following Department employees shall be tested for drug and alcohol use:

- (1) Applicants;
- (2) Those employees who have had a reasonable suspicion referral;
- (3) Post-accident employees, as soon as reasonably possible after the accident; and
- (4) HPR employees.

(b) Only HPR employees shall be subject to random testing.

(c) Employees shall be given at least a 30-day written notice from September 20, 1996, that the Department is implementing a drug and alcohol testing program and shall be given an opportunity to seek treatment. Following September 20, 1996, the Department shall procure a testing vendor and testing shall be implemented as described herein.

(Sept. 20, 1996, D.C. Law 11-158, § 3, 43 DCR 3702.)

Prior Codifications. — 1981 Ed., § 24-448.2.

Temporary Addition of Section. — Temporary addition of subchapter: See Historical and Statutory Notes following § 24-211.21.

Emergency legislation. — For temporary addition of subchapter, see note to § 24-211.21.

Legislative history of Law 11-91. — For

legislative history of D.C. Law 11-91, see Historical and Statutory Notes following § 24-211.21.

Legislative history of Law 11-158. — For legislative history of D.C. Law 11-158, see Historical and Statutory Notes following § 22-211.21.

§ 24-211.23. Testing methodology.

(a) Testing shall be performed by an outside contractor. The contractor shall be a laboratory certified by the United States Department of Health and Human Services (“HHS”) to perform job related drug and alcohol forensic testing.

(b) For random testing, the contractor shall come on-site to the Department’s institutions and shall collect urine specimens and split the samples. The contractor shall perform enzyme-multiplied-immunoassay technique (“EMIT”) testing on one sample and store the split sample. Any positive EMIT test shall then be confirmed by the contractor using gas chromatography/mass spectrometry (“GCMS”) methodology.

(c) Any Department employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer.

(e) Any Department employee who operates a motor vehicle in the District of Columbia shall be deemed to have given his or her consent, subject to conditions in this subchapter, to the testing of the person's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable suspicion or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person was operating or in physical control of a motor vehicle within the District while that person's alcohol concentration was 0.08 grams or more per 210 liters of breath, while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle was impaired by the consumption of an intoxicating beverage.

(f) A breathalyzer shall be deemed positive by the Department's testing contractor if the contractor determines that 210 liters of the employee's breath contains 0.08 grams or more of alcohol. A positive breathalyzer test shall be grounds for termination of employment in accordance with subchapter I of Chapter 6 of Title 1.

(Sept. 20, 1996, D.C. Law 11-158, § 4, 43 DCR 3702; Apr. 13, 1999, D.C. Law 12-227, § 3, 46 DCR 502; Mar. 2, 2007, D.C. Law 16-195, § 5, 53 DCR 8675.)

Prior Codifications. — 1981 Ed., § 24-448.3.

Effect of amendments. — D.C. Law 16-195, in subsec. (e), substituted "alcohol concentration was 0.08 grams or more per 210 liters of breath" for "breath contained .08% or more, by weight, of alcohol"; and, in subsec. (f), substituted "210 liters of the employee's breath contains 0.08 grams or more of alcohol" for "1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol".

Temporary Addition of Section. — Temporary addition of subchapter: See Historical and Statutory Notes following § 24-211.21.

Emergency legislation. — For temporary addition of subchapter, see note to § 24-211.21.

For temporary amendment of section, see § 3 of the Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-599, January 20, 1999, 46 DCR 1147).

For temporary (90 day) amendment of section, see § 4(b) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 5 of Anti-Drunk Driving Clarification Second Congressional Review Emergency

Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 5 of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

Legislative history of Law 11-91. — For legislative history of D.C. Law 11-91, see Historical and Statutory Notes following § 24-211.21.

Legislative history of Law 11-158. — For legislative history of D.C. Law 11-158, see Historical and Statutory Notes following § 24-211.21.

Legislative history of Law 12-227. — Law 12-227, the "Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-625, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 11, 1998, it was assigned Act No. 12-548 and transmitted to both Houses of Congress for its review. D.C. Law 12-227 became effective on April 13, 1999.

Legislative history of Law 16-195. — Law 16-195, the "Anti-Drunk Driving Clarification

Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-463, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on July 11, 2006, and

October 3, 2006, respectively. Signed by the Mayor on October 18, 2006, it was assigned Act No. 16-488 and transmitted to both Houses of Congress for its review. D.C. Law 16-195 became effective on March 2, 2007.

§ 24-211.24. Procedure and employee impact.

The drug testing policy shall be issued in advance to inform employees and allow them the opportunity to seek treatment. Thereafter, any confirmed positive test results or a refusal to submit to the test shall be grounds for termination of employment in accordance with subchapter I of Chapter 6 of Title 1. This testing program is for all employees, including management, and shall be implemented as a single Department program. The results of a random test may not be turned over to any law enforcement agency without the employee's written consent.

(Sept. 20, 1996, D.C. Law 11-158, § 5, 43 DCR 3702.)

Prior Codifications. — 1981 Ed., § 24-448.4.

Temporary Addition of Section. — Temporary addition of subchapter: See Historical and Statutory Notes following § 24-211.21.

Emergency legislation. — For temporary addition of subchapter, see note to § 24-211.21.

Legislative history of Law 11-91. — For legislative history of D.C. Law 11-91, see Historical and Statutory Notes following § 24-211.21.

Legislative history of Law 11-158. — For legislative history of D.C. Law 11-158, see Historical and Statutory Notes following § 24-211.21.

Legislative history of Law 11-230. — Law 11-230, the "Department of Corrections Criminal Background Investigation Authorization Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-937. The Bill was adopted on first and second readings on October 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 17, 1996, it was assigned Act No. 11-462 and transmitted to both Houses of Congress for its review. D.C. Law 11-230 became effective on April 9, 1997.

PART C.

DEPARTMENT OF CORRECTIONS CRIMINAL BACKGROUND INVESTIGATIONS.

§ 24-211.41. Authorization of investigation.

(a) The Director of the Department of Corrections ("Director") shall conduct, on a biennial basis, National Crime Information Center ("NCIC") criminal background investigations on all Department employees including non-probationary employees.

(b) At the Director's discretion, the Director also may conduct NCIC investigations at unspecified times.

(June 19, 1998, D.C. Law 12-126, § 2, 45 DCR 1232.)

Prior Codifications. — 1981 Ed., § 24-448.11.

Temporary Addition of Section. — Tem-

porary addition of section: Section 2 of D.C. Law 11-230 added this section.

Emergency legislation. — For temporary

addition of section, see § 2 of the Department of Corrections Criminal Background Investigation Authorization Emergency Act of 1996 (D.C. Act 11-444, December 6, 1996, 44 DCR 116), § 2 of the Department of Corrections Criminal Background Investigation Authorization Congressional Review Emergency Act of 1997 (D.C. Act 12-33, March 11, 1997, 44 DCR 1913), § 2 of the Department of Corrections Criminal Background Investigation Authorization Second Emergency Act of 1997 (D.C. Act 12-188, October 30, 1997, 44 DCR 6968), and § 2 of the Department of Corrections Criminal Background Investigation Authorization Congressional Recess Emergency Act of 1998 (D.C. Act 12-251, January 29, 1998, 45 DCR 899).

For temporary (90 day) addition of § 24-211.61, see § 2902 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 11-230. — Law 11-230, the “Department of Corrections Criminal Background Investigation Authorization Temporary Act of 1996,” was introduced in Council and assigned Bill No. 11-937. The Bill was adopted on first and second readings on October 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 17, 1996, it was assigned Act No. 11-462 and transmitted to both Houses of Congress for its review. D.C. Law 11-230 became effective on April 9, 1997.

Legislative history of Law 12-68. — Law

12-68, the “Department of Corrections Criminal Background Investigation Authorization Temporary Act of 1997,” was introduced in Council and assigned Bill No. 12-403. The Bill was adopted on first and second readings on October 7, 1997, and November 4, 1997, respectively. Signed by the Mayor on November 11, 1997, it was assigned Act No. 12-210 and transmitted to both Houses of Congress for its review. D.C. Law 12-68 became effective on March 20, 1998.

Legislative history of Law 12-126. — Law 12-126, the “Department of Corrections Criminal Background Investigation Authorization Act of 1998,” was introduced in Council and assigned Bill No. 12-029, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-260 and transmitted to both Houses of Congress for its review. D.C. Law 12-126 became effective on June 19, 1998.

Legislative history of Law 11-230. — Section 4(b) of D.C. Law 11-230 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 12-68. — Section 2 of D.C. Law 12-68 added this section.

Legislative history of Law 12-68. — Section 4(b) of D.C. Law 12-68 provided that the act shall expire after 225 days of its having taken effect.

PART D.

LIMITATION ON DEPARTMENT OF CORRECTIONS' USE OF FACILITIES ON D.C. GENERAL HOSPITAL CAMPUS.

§ 24-211.61. Limitation on Department of Corrections' use of facilities on D.C. General Hospital Campus.

The Department of Corrections shall not house any misdemeanants, felons, ex-offenders, or persons awaiting trial or sentencing for offenses committed in the District of Columbia in any facility on the D.C. General Hospital Campus (Reservation 13) other than the District of Columbia Jail or the Correctional Treatment Facility. This limitation shall not prohibit the Department of Corrections from relocating its headquarters to any facility on Reservation 13 or using any Reservation 13 facility for the housing of records or training purposes.

(Oct. 1, 2002, D.C. Law 14-190, § 3002, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 24-201.61.

Mayor's Orders. — Establishment — Steering Committee for the Planning and Develop-

ment of Hill East Waterfront, see Mayor's Order 2002-157, September 13, 2002 (49 DCR 8627).

Subchapter III. Educational Good Time Credits.

§ 24-221.01. Educational good time.

(a) Every person whose conduct complies with institutional rules and who demonstrates a desire for self-improvement by successfully participating in an academic or vocational program, including special education and Graduate Equivalency Diploma programs, shall earn educational good time credits of no less than 3 days a month and not more than 5 days a month.

(b) Educational good time credits authorized by the provisions of this section shall be applied to the person's minimum term of imprisonment to determine the date of eligibility for release on parole and to the person's maximum term of imprisonment to determine the date when release on parole becomes mandatory.

(Apr. 11, 1987, D.C. Law 6-218, § 3, 34 DCR 484; Dec. 10, 2009, D.C. Law 18-88, § 701, 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 24-429.
Effect of amendments. — D.C. Law 18-88, in subsec. (a), substituted "participating in" for "completing" and deleted the second sentence which had read as follows: "These credits shall not be awarded until completion of the academic or vocational program."

Emergency legislation. — For temporary (90 day) amendment of section, see § 3061 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

Legislative history of Law 6-218. — Law 6-218, the "District of Columbia Good Time Credits Act of 1986," was introduced in Council and assigned Bill No. 6-505, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-253 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-88. — Law 18-88, the "Omnibus Public Safety and Justice Amendment Act of 2009", as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

CASE NOTES

ANALYSIS

Administrative remedies.
 Review.

Administrative remedies.

Where Bureau of Prisons had stated unequivocally that prisoner would not be awarded any educational good time credits, it would have been futile for prisoner to attempt to exhaust administrative remedies before bringing suit to obtain those credits. D.C. Code 1981, § 24-429. *Doughty v. United States Bd. of Parole*, 782 F. Supp. 653, 1992 U.S. Dist. LEXIS 608 (1992), affirmed without opinion by 971

F.2d 765, 297 U.S. App. D.C. 302, 1992 U.S. App. LEXIS 28620 (1992).

Before bringing habeas petition alleging that inmate was entitled to educational good time credits, inmate was required to exhaust administrative remedies by raising issue before Department of Corrections. *Stevens v. Quick*, 678 A.2d 28, 1996 D.C. App. LEXIS 123 (1996).

Review.

Where prison officials had since awarded institutional good time credits to prisoner, portion of his complaint seeking institutional good time credits, as opposed to educational good time credits, was moot. D.C. Code 1981, §§ 24-428, 24-429. *Doughty v. United States Bd. of*

Parole, 782 F. Supp. 653, 1992 U.S. Dist. LEXIS 608 (1992), affirmed without opinion by 971 F.2d 765, 297 U.S. App. D.C. 302, 1992 U.S. App. LEXIS 28620 (1992).

Statement in pro se complaint that prisoner was seeking restoration of “any and all extra good time” which he had been denied was sufficient to put prison officials on notice that he sought good time credit for which he was eligible under the entire Good Time Credits Act of the District of Columbia, whether under the institutional provision or the educational provision. D.C. Code 1981, §§ 24-428, 24-429. *Doughty v. United States Bd. of Parole*, 782 F.

Supp. 653, 1992 U.S. Dist. LEXIS 608 (1992), affirmed without opinion by 971 F.2d 765, 297 U.S. App. D.C. 302, 1992 U.S. App. LEXIS 28620 (1992).

Even though Court of Appeals referred only to institutional good time credits in its mandate reversing dismissal of complaint, district court could consider claim for educational good time credits as well. D.C. Code 1981, §§ 24-428, 24-429. *Doughty v. United States Bd. of Parole*, 782 F. Supp. 653, 1992 U.S. Dist. LEXIS 608 (1992), affirmed without opinion by 971 F.2d 765, 297 U.S. App. D.C. 302, 1992 U.S. App. LEXIS 28620 (1992).

§ 24-221.01a. Meritorious good time credit.

(a) In the discretion of the Director of the Department of Corrections, a prisoner may be allowed meritorious good time credit for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

(b) Meritorious good time credits authorized by this section shall be applied to the person's minimum term of imprisonment to determine the date of eligibility for release on parole and to the person's maximum term of imprisonment to determine the date when release on parole becomes mandatory.

(Apr. 11, 1987, D.C. Law 6-218, § 3a, as added Aug. 20, 1994, D.C. Law 10-151, § 802(b), 41 DCR 2608.)

Prior Codifications. — 1981 Ed., § 24-429.1.

Emergency legislation. — For temporary addition of section, see § 802(b) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — Law 10-151, the “Omnibus Criminal Justice Reform Amendment Act of 1994,” was introduced in

Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

§ 24-221.01b. Limitations.

Educational and meritorious good time credits shall not reduce the minimum sentence of any inmate convicted of a crime of violence as defined by § 22-4501, by more than 15%.

(Apr. 11, 1987, D.C. Law 6-218, § 3b, as added Aug. 20, 1994, D.C. Law 10-151, § 802(c), 41 DCR 2608.)

Prior Codifications. — 1981 Ed., § 24-429.2.

Emergency legislation. — For temporary addition of section, see § 802(c) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary (90 day) addition of section, see § 402(a) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) addition of section, see § 402(a) of Public Safety Legislation Sixty-

Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 24-221.01a.

Legislative history of Law 10-151. — For

§ 24-221.01c. Credits for good behavior, rehabilitation programs, work details, and special projects.

(a) A person sentenced for a misdemeanor whose conduct complies with institutional rules shall be eligible to receive good time credits of up to 3 credits per calendar month for good behavior, as prescribed by applicable rules.

(b) A person sentenced for a misdemeanor who demonstrates successful participation in one or more rehabilitation programs, work details, or special projects shall be eligible to receive good time credits of up to 3 credits per calendar month for each such program, detail, or project, as prescribed by applicable rules.

(c) No person shall receive more than 8 credits per calendar month under sections § 24-221.01 and this section combined.

(d) Good time credits shall be computed from the day on which a person is first incarcerated. In a case in which the person is later sentenced for a misdemeanor, the good time credits shall not be awarded until after a sentence is imposed.

(Apr. 11, 1987, D.C. Law 6-218, § 3c, as added May 17, 2011, D.C. Law 18-372, § 2(a), 58 DCR 7.)

Legislative history of Law 18-372. — Law 18-372, the “District of Columbia Good Time Credits Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-840, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted

on first and second readings on November 9, 2010, and November 23, 2010, respectively. Signed by the Mayor on December 28, 2010, it was assigned Act No. 18-647 and transmitted to both Houses of Congress for its review. D.C. Law 18-372 became effective on May 17, 2011.

§ 24-221.02. Administration of good time credits.

(a)(1) The Mayor shall administer the award of good time credits.

(2) The Mayor shall promulgate proposed rules for granting, withholding, forfeiting, cancelling, and restoring good time credits.

(3) The proposed rules shall be submitted to the Council of the District of Columbia (“Council”) for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) The Mayor shall establish an Institutional Appeals Board (“Board”) of 5 persons not employed by the Department of Corrections, to review the granting, withholding, forfeiture, cancellation, and restoration of good time credits. The Department shall provide staff support to the board. An inmate shall be entitled to appeal a decision to the board. The board shall review the record of the inmate and any additional materials submitted by the inmate or the Department. The decision of the board shall be final.

(Apr. 11, 1987, D.C. Law 6-218, § 4, 34 DCR 484; May 17, 2011, D.C. Law 18-372, § 2(b), 58 DCR 7.)

Section references. — This section is referred to in § 24-221.04.

Prior Codifications. — 1981 Ed., § 24-430.

Effect of amendments. — D.C. Law 18-372, in subsec. (a), deleted “educational” preceding “good time”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 402(b) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of sec-

tion, see § 402(b) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 6-218. — For legislative history of D.C. Law 6-218, see Historical and Statutory Notes following § 24-221.01.

Legislative history of Law 18-372. — For history of Law 18-372, see notes under § 24-221.01c

§ 24-221.03. Jail time; parole.

(a) Every person shall be given credit on the maximum and the minimum term of imprisonment for time spent in custody, or on parole in accordance with § 24-406, as a result of the offense for which the sentence was imposed. When entering the final order in any case, the court shall provide that the person be given credit for the time spent in custody, or on parole in accordance with § 24-406, as a result of the offense for which sentence was imposed.

(b) When a person has been in custody due to a charge that resulted in a dismissal or acquittal, the time that would have been credited against a sentence for the charge, had the charge not resulted in a dismissal or acquittal, shall be credited against any sentence that is based upon a charge for which a warrant or commitment detainer was placed during the pendency of the custody.

(c) Any person who is sentenced to a term of confinement in a correctional facility or hospital shall have deducted from the term all time actually spent, pursuant to a court order, by the person in a hospital for examination purposes or treatment prior to trial or pending an appeal.

(Apr. 11, 1987, D.C. Law 6-218, § 5, 34 DCR 484; May 20, 2009, D.C. Law 17-389, § 2, 56 DCR 1196.)

Prior Codifications. — 1981 Ed., § 24-431.

Effect of amendments. — D.C. Law 17-389, in subsec. (a), substituted “, or on parole in accordance with § 24-406,” for “or on parole”.

Legislative history of Law 6-218. — For legislative history of D.C. Law 6-218, see Historical and Statutory Notes following § 24-221.01.

Legislative history of Law 17-389. — Law 17-389, the “Equitable Street Time Credit

Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-750 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 16, 2009, it was assigned Act No. 17-694 and transmitted to both Houses of Congress for its review. D.C. Law 17-389 became effective on May 20, 2009.

CASE NOTES

ANALYSIS

Construction and application.
Hospitalization credit.
Parole credit.

Revocation of parole.
Separate offense.

Construction and application.

Opinion of corporation counsel regarding

whether parole statute impliedly repealed statute banning credit for time served on parole if parole was revoked was not entitled to deference; implied repeal was issue for court, as final arbitrator within judicial system, notwithstanding corporation counsel's role as legal advisor to District of Columbia government and potentially persuasive power of office's opinions. D.C. Code 1981, §§ 24-206(a), 24-431(a). United States Parole Comm'n v. Noble, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Enactment of statute providing that every person shall be given credit toward service of sentence "for time spent in custody or on parole" did not impliedly repeal statute providing no credit against sentence for street time on parole if parole is revoked; possible, absolute meaning of "or on parole"—as including credit for street time after parole was revoked—was not clearly enough indicated to supplant interpretation that harmonized provisions, with one statute representing general application and other representing specified exception. D.C. Code 1981, §§ 24-206(a), 24-431(a). United States Parole Comm'n v. Noble, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Court was not required to defer to administrative interpretation of parole statute in determining pure question of law as to whether statute impliedly repealed earlier enactment banning credit for time spent on parole if parole was revoked; moreover, even if deference ordinarily due government agency for interpretation of statute it administered applied, statutory language and relevant history did not permit deference where reconciliation of statutes was reasonably possible. D.C. Code 1981, §§ 24-206(a), 24-431(a). United States Parole Comm'n v. Noble, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

The Good Time Credits Act of 1986 (GTCA) was intended to relieve prison overcrowding, to encourage prisoners to rehabilitate themselves, and, implicitly, to temper justice with mercy in those cases in which such tempering is appropriate; to promote these purposes, GTCA allowed good time to be credited against prisoner's minimum sentence. D.C. Code 1981, § 24-431(a). Luck v. District of Columbia, 617 A.2d 509, 1992 D.C. App. LEXIS 298 (1992).

Hospitalization credit.

Defendant was "in custody as a result of the offense" under Good Time Credits Act, when defendant was committed to mental hospital under Sexual Psychopath Act (SPA) prior to sentencing for sex offenses, and thus, defendant was entitled to credit against sentence. D.C. Code 1981, §§ 22-3503 to 22-3511, 24-431(a). Shelton v. United States, 721 A.2d 603, 1998 D.C. App. LEXIS 239 (1998).

Parole credit.

Under District of Columbia law, time spent on parole prior to effective date of Good Time

Credit Act could not be credited against prisoner's sentence when that sentence was recomputed after effective date. D.C. Code 1981, § 24-431(a). Luck v. D.C. Parole Bd., 996 F.2d 372, 1993 U.S. App. LEXIS 15272 (C.A.D.C. 1993).

Prisoner was not entitled to two days credit toward resentencing, for period of time he remained at large avoiding an arrest warrant that elapsed between effective date of Good Time Credit Act allowing for time spent on parole to be so credited, and date that he was apprehended. D.C. Code 1981, § 24-431(a). Luck v. D.C. Parole Bd., 996 F.2d 372, 1993 U.S. App. LEXIS 15272 (C.A.D.C. 1993).

District of Columbia Good Time Credit Act, as interpreted to provide credit against resentencing for time spent on parole after effective date of Act but not for such time spent before effective date, did not violate equal protection rights of prisoner seeking credit for time on parole prior to Act's effective date; cut-off date could be rationally established in furtherance of state's objective of preventing overcrowding of prisons. D.C. Code 1981, § 24-431; U.S. Const. Amend. 5. Luck v. D.C. Parole Bd., 996 F.2d 372, 1993 U.S. App. LEXIS 15272 (C.A.D.C. 1993).

Parolee was entitled to credit against aggregate federal/local sentence, pursuant to the District of Columbia Good Time Credits Act, for time served on parole for his District of Columbia sentence. D.C. Code 1981, § 24-431(a). Noble v. United States Parole Comm'n, 887 F. Supp. 11, 1995 U.S. Dist. LEXIS 7704 (1995).

Good Time Credits Act of 1986 (GTCA) provided for first time that prisoners would receive credit for time which they successfully spent on parole. D.C. Code 1981, § 24-431(a). Luck v. District of Columbia, 617 A.2d 509, 1992 D.C. App. LEXIS 298 (1992).

Time spent on parole prior to effective date of Good Time Credits Act of 1986 (GTCA) cannot be credited against person's sentence when that person's sentence is recomputed after effective date of Act. D.C. Code 1981, § 24-431(a). Luck v. District of Columbia, 617 A.2d 509, 1992 D.C. App. LEXIS 298 (1992).

Revocation of parole.

Refusal of United States Parole Commission, in sentencing prisoner upon parole revocation, to credit prisoner with time spent on parole, under governing District of Columbia statute, did not violate prisoner's right to equal protection, although prisoners in custody of District of Columbia Department of Corrections were given credit for such time pursuant to misapplication of statute, as prisoner was not similarly situated to prisoners who were not in federal custody, and difficulty of rearresting inmates who were already released would provide rational basis for the disparate treatment.

U.S. Const. Amend. 5; D.C. Code 1981, § 24-206(a). *Noble v. United States Parole Comm'n*, 194 F.3d 152, 1999 U.S. App. LEXIS 29194 (C.A.D.C. 1999).

Certification of question as to whether defendant was entitled to credit against sentence imposed upon revocation of parole for time spent on parole was proper; relevant dicta in District of Columbia Court of Appeals opinions sent mixed signals, sister circuit of federal Court of Appeals had answered question differently than arguably controlling dicta of District of Columbia Court of Appeals, District of Columbia Court of Appeals had probably not had opportunity to address issue with benefit of full briefing, and issue did not raise exclusively federal question as to interpretation of Home Rule Act. D.C. Code 1981, §§ 1-233(c)(2), 11-723, 24-431(a). *Noble v. United States Parole Comm'n*, 82 F.3d 1108, 1996 U.S. App. LEXIS 10163 (C.A.D.C. 1996).

Parolee, whose parole had been revoked, was subject to retroactive application of United States Parole Commission v. *Noble* which applied District of Columbia (D.C.) statute providing that time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced if a prisoner's parole is revoked; since parolee was always under federal supervision, and since United States Parole Commission (USPC) consistently followed D.C. statute providing that time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced if a prisoner's parole is revoked, parolee had no legitimate expectation of an earlier release date based on D.C. statute providing for street time credit, which was followed by D.C. parole authorities. D.C. Code 1981, §§ 24-206(a), 24-431. *Noble v. United States Parole Comm'n*, 32 F.Supp.2d 11, 1998 U.S. Dist. LEXIS 20529

(1998), affirmed by 194 F.3d 152, 338 U.S. App. D.C. 362, 1999 U.S. App. LEXIS 29194 (1999).

Rule of lenity did not apply to permit credit for time served on parole after parole was revoked where there was no ambiguity between statutes and it was clear that statute providing for credit for time served on parole did not impliedly repeal statute of more specific application prohibiting credit for parole time if parole was later revoked. D.C. Code 1981, §§ 24-206(a), 24-431(a). *United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Separate offense.

Petitioner was not entitled to 180 days' credit toward his sentence imposed in burglary conviction for the same time period that he served a 180-day sentence imposed in theft case, where the prison term imposed in theft case was ordered to run consecutively to any other sentence. *Jones v. Wainwright*, 744 F.Supp.2d 341, 2010 U.S. Dist. LEXIS 110982 (2010), appeal dismissed by 2011 U.S. App. LEXIS 17636 (D.C. Cir. Aug. 19, 2011).

Defendant, imprisoned following conviction of receiving stolen property and unauthorized use of a motor vehicle, was not entitled to credit for time served in a prior case, and therefore, not entitled to habeas corpus relief, where prior case was unrelated to current convictions. *Tuckson v. Fed. Bureau of Prisons*, 729 F.Supp.2d 122, 2010 U.S. Dist. LEXIS 76674 (2010).

Parolee was not entitled to credit for time spent in custody on his second-degree attempted theft conviction against his unrelated sentence for robbery and assault on police officer under District of Columbia law; credit for time spent in custody was only available on offense for which sentence was imposed. *Watts v. United States Parole Comm'n*, 657 F.Supp.2d 83, 2009 U.S. Dist. LEXIS 88730 (2009).

§ 24-221.04. Forfeiture.

The award of good time credits for good behavior and faithful performance of duties may be forfeited, withheld, and restored by the Director, in accordance with rules promulgated by the Mayor pursuant to § 24-221.02, after a hearing, which shall be conducted in accordance with the rules.

(Apr. 11, 1987, D.C. Law 6-218, § 6, 34 DCR 484.)

Prior Codifications. — 1981 Ed., § 24-432.
Legislative history of Law 6-218. — For legislative history of D.C. Law 6-218, see His-

torical and Statutory Notes following § 24-221.01.

§ 24-221.05. Reporting requirement.

The Department shall regularly inform inmates of all awards, forfeitures, and restorations of good time credits, and shall inform the Board of Parole of

all persons who are expected to become eligible for release on parole within 45 days of their eligibility date, and shall inform the Board of Parole of all persons whose release on parole will become mandatory within 45 days of the date when their release on parole becomes mandatory.

(Apr. 11, 1987, D.C. Law 6-218, § 7, 34 DCR 484.)

Prior Codifications. — 1981 Ed., § 24-433.
Legislative history of Law 6-218. — For legislative history of D.C. Law 6-218, see His-

torical and Statutory Notes following § 24-221.01.

§ 24-221.06. Exceptions.

Institutional and educational good time credits shall not be applied to the minimum terms of persons sentenced under § 22-4502, § 48-901.02, § 48-904.01, § 22-2104(b), § 22-2803, or § 22-4504(b).

(Apr. 11, 1987, D.C. Law 6-218, § 8, 34 DCR 484; Nov. 2, 1989, D.C. Law 8-52, § 2, 36 DCR 4740; Jan. 30, 1990, D.C. Law 8-57, § 2, 36 DCR 5761; May 8, 1993, D.C. Law 9-270, § 4, 39 DCR 9223; Oct. 2, 1993, D.C. Law 10-26, § 4, 40 DCR 3416.)

Prior Codifications. — 1981 Ed., § 24-434.
Legislative history of Law 6-218. — For legislative history of D.C. Law 6-218, see Historical and Statutory Notes following § 24-221.01.

Legislative history of Law 8-52. — Law 8-52, the "Good Time Credits Temporary Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-296. The Bill was adopted on first and second readings on May 30, 1989 and June 13, 1989, respectively. Signed by the Mayor on June 27, 1989, it was assigned Act No. 8-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-57. — Law 8-57, the "Good Time Credits Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-303, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned Act No. 8-71 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-270. — Law 9-270, the "Carjacking Prevention Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-629. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-328 and transmitted to both Houses of Congress for its review. D.C. Law 9-270 became effective on May 8, 1993.

Legislative history of Law 10-26. — Law 10-26, the "Carjacking Prevention Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-16, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 7, 1993, and May 4, 1993, respectively. Signed by the Mayor on May 19, 1993, it was assigned Act No. 10-28 and transmitted to both Houses of Congress for its review. D.C. Law 10-26 became effective on October 2, 1993.

CASE NOTES

Homicide.

Inmate serving mandatory minimum sentence of 20 years for conviction of first-degree felony-murder was entitled to credits under District of Columbia Good Time Credits Act; statute under which defendant was sentenced was not specifically exempted from provisions

for institutional good time credits under Act. D.C. Code 1981, §§ 22-2401, 22-2404, 24-428(a), 24-434. *Cunningham v. Williams*, 711 F. Supp. 644, 1989 U.S. Dist. LEXIS 5351 (1989), reversed by 954 F.2d 760, 293 U.S. App. D.C. 329, 1992 U.S. App. LEXIS 1059 (1992).

*Subchapter IV. Prison Industries.***§ 24-231.01. Definitions.**

For the purposes of this subchapter, the term:

(1) “Bureau of Justice Assistance Private Sector Prison Industry Enhancement Certification Program”, or “PIE Program”, means the federal grant-in-aid program administered by the Bureau of Justice Assistance, United States Department of Justice, pursuant to 42 U.S.C. 3741-3761, and participation in which by the states or the District of Columbia affords an exemption from the general federal prohibition against open market sale of prisoner-produced goods, pursuant to 18 U.S.C. 1761(c).

(2) “Correctional facility” means any building or group of buildings and concomitant services operated as a single management unit by the District of Columbia Department of Corrections for the purpose of housing and providing services to persons ordered confined pending trial or upon conviction and sentencing for a violation of law.

(3) “Department” means the District of Columbia Department of Corrections.

(4) “Director” means the Director of the District of Columbia Department of Corrections.

(5) “Joint venture” means a production unit in or part of a prison industry, that:

(A) Employs sentenced prisoners;

(B) Is wholly or partly owned, operated, or managed by a joint venture partner that is a private-sector employer; and

(C) Sells goods or services in the open market, including in interstate and foreign commerce, or to the federal government, the District of Columbia, or any state or political subdivision of a state.

(6) “Prison industries” means an organized plan, including equipment and facilities, for the production and distribution of goods or services on the grounds of a correctional facility to aid disciplinary and rehabilitative goals of the prison system.

(7) “Prison Industries Fund” means the revolving fund established by § 24-231.02.

(8) “Prisoner” means any person who is confined to an adult correctional facility.

(9) “Private-sector employer” means:

(A) Any person who, for compensation, uses the services of an individual; and

(B) Any administrator, agent, assignee, conservator, executor, liquidator, officer, receiver, trustee, trustee in bankruptcy, or other representative of a person described in subparagraph (A) of this paragraph.

(10) “Substance abuse” means any pattern of pathological use of alcohol or other drug that causes impairment in social or occupational functioning, or that produces physiological dependency as evidenced by physical tolerance or by physical symptoms when it is withdrawn.

(11) "Washington, D.C., region" means the geographic area that encompasses the District of Columbia and adjacent portions of the State of Maryland and the Commonwealth of Virginia.

(May 8, 1996, D.C. Law 11-117, § 2, 43 DCR 1179.)

Section references. — This section is referred to in §§ 32-1503 and 51-101.

Prior Codifications. — 1981 Ed., § 24-458.1.

Legislative history of Law 11-117. — Law 11-117, the "Prison Industries Act of 1996," was introduced in Council and assigned Bill No. 11-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1996, and

February 6, 1996, respectively. Signed by the Mayor on February 26, 1996, it was assigned Act No. 11-221 and transmitted to both Houses of Congress for its review. D.C. Law became effective on May 8, 1996.

Editor's notes. — Mayor authorized to issue rules: Section 19 of D.C. Law 11-117 provided that, in accordance with subchapter I of Chapter 15 of Title 1, the Mayor shall issue rules to implement this subchapter.

§ 24-231.02. Establishment of Prison Industries Fund.

(a) There is hereby established in the Treasury a revolving fund to be known as the Prison Industries Fund ("Fund"). The Fund shall be used to receive and disburse funds from appropriations, income from operations, fees, gifts by devise or bequest, donations, grants, investments, and revenue from any and all sources pursuant to this subchapter.

(b) Revenue deposited into the Fund is specifically designated to be expended by the Department for the administration, improvement, and maintenance of property and programs managed by the Department and shall supplement and not replace services provided by the Department. The Fund shall not provide funding to any other District government agencies.

(c) Proceeds of the Fund may be invested in a prudent and reasonable manner consistent with applicable District government policies and procedures with recommendations from the Prison Industries Joint Venture Advisory Board established by § 24-231.07 [repealed].

(d) The Fund shall be continuing. Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time but shall be continually available to the Department for the uses and purposes set forth in this subchapter, subject to authorization by Congress in an appropriations act.

(e) The Fund shall be available without fiscal-year limitation and shall be used by the Mayor to maintain the District of Columbia's prison industries program in accordance with this subchapter. The accounting for the Fund shall be maintained on the accrual basis, including provision for employees' accrued annual leave and depreciation of fixed assets, and financial reports shall be prepared on the basis of such accounting.

(May 8, 1996, D.C. Law 11-117, § 3, 43 DCR 1179.)

Section references. — This section is referred to in §§ 24-231.01 and 24-231.02.

Prior Codifications. — 1981 Ed., § 24-458.2.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-458.1.

§ 24-231.03. Use of Fund revenues.

Receipts from the sales of goods and services produced by the prison industries program shall be deposited to the credit of the Fund. The Fund shall be used for all necessary expenses directly related to the Fund, including personal services; payments to inmates, or payments to their dependents in accordance with this subchapter; purchase, repair, and maintenance of equipment; purchase of raw materials and supplies; payment of dues and expenses of attendance at meetings and conventions, as approved by the Mayor; maintenance and repair of buildings used for Fund purposes; alteration of existing facilities used for Fund purposes; and, within the limits of amounts provided in annual appropriation acts, acquisition and improvement of real property.

(May 8, 1996, D.C. Law 11-117, § 4, 43 DCR 1179.)

Prior Codifications. — 1981 Ed., § 24-458.3. legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

Legislative history of Law 11-117. — For

§ 24-231.04. Maintenance of the prison industries program; administration by the Director.

(a) The Mayor shall maintain a prison industries program which shall be administered by the Director and which shall provide for the operation of commercial, manufacturing, sales, and service enterprises that are located on the grounds of a correctional facility and that employs prisoners. The prison industries program shall be comprised of 2 components, designated as the government-enterprise component and the joint-venture component.

(b) The government-enterprise component shall be comprised of prison industry operations that are owned, managed, and operated as an entity of the Department. This component shall neither be subject to the prevailing wage requirements set forth in § 24-231.10 nor the workers' compensation requirements set forth in § 24-231.12(a), except that any prison industry within this component that seeks and receives approval under the PIE Program shall be subject to the requirements of §§ 24-231.10(a) and 24-231.12(a). Government-enterprise component operations are authorized to produce, offer for sale, and sell goods and services to agencies of the District and to any other legally-eligible purchaser. Upon recommendation by the Director and by the Prison Industries Joint Venture Advisory Board established by § 24-231.07 [repealed], the Mayor may require any government-enterprise component prison industry to comply with the federal requirements for the purpose of applying for federal government approval under the PIE Program to offer for sale and sell goods and services in interstate commerce and to the federal government.

(c) The joint-venture component shall be comprised of prison industry operations that are jointly owned, managed, and operated by the Department and its joint-venture partners in accordance with § 24-231.05 and other applicable federal and District laws. Except as otherwise provided by § 24-231.05, joint-venture component prison industries shall be organized and

operated with the intent of complying with all necessary requirements to qualify for approval under the PIE Program to offer for sale and to sell goods and services in interstate commerce.

(May 8, 1996, D.C. Law 11-117, § 5, 43 DCR 1179.)

Prior Codifications. — 1981 Ed., § 24-458.4. legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.
Legislative history of Law 11-117. — For

§ 24-231.05. Sales, advertising and marketing of prison industries products and services; tax exemption.

(a) Whenever goods or services scheduled for purchase by an agency of the District government are produced or can be produced by a prison industry, the agency shall purchase the goods or services from the prison industries unless the Director provides written certification that:

(1) A prison industry cannot provide the goods or services on the terms and conditions required by the agency; or

(2) The agency has been quoted a price below the market price.

(b) In addition to the agencies of the District government, goods and services produced by prison industries may be sold to:

(1) Any department or agency of any other state, city, county, or territory of the United States;

(2) Any department or agency of the federal government;

(3) Any not-for-profit organization, upon the enactment by Congress of an amendment to 18 U.S.C. § 1761(b), to authorize prison industry sales to not-for-profit organizations; and

(4) Open-market purchasers, in accordance with 18 U.S.C. § 1761(c).

(c) The Mayor may develop and implement an on-going advertising and marketing plan to sell goods and services produced by prison industries to authorized purchasers. This advertising and marketing plan shall include:

(1) Regular publication and distribution to authorized purchasers of a catalog and price list for goods and services produced by prison industries;

(2) Procedures for responding to invitations for bids or requests for proposals issued by any governmental unit that is an authorized purchaser; and

(3) Procedures for use of advertising materials, speaking engagements, direct-mail marketing, telemarketing, director contacts by salespersons, and other marketing techniques to inform authorized purchasers about the availability, prices, and quality of goods or services that are produced or can be produced by the prison industries.

(d) Subject to the approval of the Council, by act, the Mayor may include in the terms of a prison industry joint venture agreement an exemption from applicable District taxes, or other tax incentives, when the Mayor determines this is necessary to secure a private-sector employer's participation.

(May 8, 1996, D.C. Law 11-117, § 6, 43 DCR 1179.)

Section references. — This section is referred to in §§ 2-301.04 and 24-231.04.

Prior Codifications. — 1981 Ed., § 24-458.5.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

§ 24-231.06. Joint venture agreements.

(a) The Mayor is authorized to enter into an agreement with any private-sector employer to establish a joint venture for the management and operation of all or any part of a prison industry.

(b) The terms of a joint venture agreement shall include:

(1) Area space requirements, equipment, security services, and utilities;

(2) Procedures for the selection of prisoners for employment; and

(3) A commitment by the private-sector employer to indemnify, hold harmless, and defend the District, its agents, officers, and employees against any and all claims or liability of any kind arising from, based on, or resulting from any act, default, or omission of the private-sector employer under the agreement.

(May 8, 1996, D.C. Law 11-117, § 7, 43 DCR 1179.)

Prior Codifications. — 1981 Ed., § 24-458.6.

Legislative history of Law 11-117. — For

legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

§ 24-231.07. Prison Industries Joint Venture Advisory Board. [Repealed].

Repealed.

(May 8, 1996, D.C. Law 11-117, § 8, 43 DCR 1179; Apr. 29, 1998, D.C. Law 12-86, § 401(h), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 24-458.7.

Legislative history of Law 12-86. — Law 12-86, the “Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on

Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

§ 24-231.08. Employment of prisoners; terms and conditions; opportunities for advancement; qualifications.

(a) A prison industry shall employ eligible prisoners in all entry-level positions to the extent feasible.

(b) Prisoners employed in a prison industry shall not work more than 40 hours per week, except that prisoners may volunteer to work overtime hours for overtime payment at 1 ½ times the normal hourly wage when necessary to meet a prison industry’s production needs.

(c) For positions requiring an advanced level of skills or experience and for

supervisory positions, a prison industry may employ nonprisoner personnel if the prison industry staff responsible for reviewing the qualifications of eligible prisoner job applicants:

(1) Demonstrate to the satisfaction of the Director that no eligible prisoner job applicant currently is qualified for the position; and

(2) Develop a plan satisfactory to the Director for training prisoners employed in entry-level positions, the goal of which is to enable prisoners to attain an advanced level of skills or experience for supervisory positions within a specific time.

(d) Subject to the approval of the Director, each prison industry shall develop and provide the following, in writing, to all prisoner employees and job applicants:

(1) Job descriptions;

(2) Schedule of hours of work;

(3) Wage schedule and procedures for recording hours worked and making payment of wages earned in accordance with § 24-231.11;

(4) Work place rules of safety and conduct;

(5) Description of the factors to be considered and the procedures to be followed in evaluating employee performance, making promotions, and granting wage increases;

(6) Description of training to be provided on the job; and

(7) Description of disciplinary action that may be taken in the event that an employed prisoner violates workplace rules of safety and conduct or otherwise fails or neglects to perform job responsibilities in a satisfactory manner.

(e) The items described in subsection (d) of this section shall be discussed orally with prisoner job applicants. Each applicant, as a condition of employment, shall sign a statement affirming that he or she:

(1) Understands and agrees to abide by the workplace rules of safety and conduct;

(2) Will perform job responsibilities in a satisfactory manner; and

(3) Is acting voluntarily and is not under any condition of duress.

(f) To qualify as eligible for available employment in a prison industry, a prisoner shall:

(1) Complete the application on forms to be provided by the prison industry;

(2) Undergo a medical examination and substance abuse screening, which shall be provided by the Department;

(3) Not be determined by the Director to be ineligible for employment due to physical or mental incapacity, substance abuse, confinement in administrative or disciplinary segregation, or other relevant circumstance; and

(4) Sign the statement required by subsection (e) of this section.

(g) Each prisoner may receive educational good time credit for participating in the prison industries program pursuant to § 24-221.01.

(May 8, 1996, D.C. Law 11-117, § 9, 43 DCR 1179.)

Prior Codifications. — 1981 Ed., § 24-458.8. legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.
Legislative history of Law 11-117. — For 231.01.

§ 24-231.09. Status of prisoners with respect to prison industries.

Prisoners who apply and are eligible for employment in a prison industry shall have no right to obtain employment in the industry. Prisoners employed in a prison industry shall not be regarded as having any right concerning that employment, shall not be regarded as District employees or employees of a private-sector employer, and shall not be regarded as having any rights or privileges accorded to District government employees or employees of a private-sector employer other than those expressly set forth in this subchapter.

(May 8, 1996, D.C. Law 11-117, § 10, 43 DCR 1179; May 22, 1998, D.C. Law 12-114, § 4, 45 DCR 486.)

Prior Codifications. — 1981 Ed., § 24-458.9.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

Legislative history of Law 12-114. — Law 12-114, the “Criminal Code Technical Amendments Act of 1997,” was introduced in Council

and assigned Bill No. 12-406, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-233 and transmitted to both Houses of Congress for its review. D.C. Law 12-114 became effective on May 22, 1998.

§ 24-231.10. Wages of employed prisoners; unemployment compensation.

(a) All prisoners employed by a prison industry shall be paid wages which shall be established by the Director and approved by the Mayor. All prisoners employed by a prison industry that is approved under the PIE Program shall be paid no less than the prevailing wage for work of a similar nature in the Washington, D.C., region as determined by the District of Columbia Department of Employment Services.

(b) Nothing in this section or elsewhere in this subchapter may be construed to create a private right, enforceable by an employed prisoner, to any wages established in accordance with subsection (a) of this section.

(c) Employment by a prison industry shall not entitle any prisoner to the benefits authorized by Chapter 1 of Title 51, unless the prisoner is employed in a prison industry approved under the PIE Program. In the latter case, the prisoner shall not be qualified to receive any payments for unemployment compensation while incarcerated.

(May 8, 1996, D.C. Law 11-117, § 11, 43 DCR 1179.)

Section references. — This section is referred to in § 24-231.04.

Prior Codifications. — 1981 Ed., § 24-458.10.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

§ 24-231.11. Disbursement of wages to employed prisoners; deductions; accounting.

(a) Wages paid to prisoners employed by a prison industry shall be considered taxable income for purposes of subchapter I of Chapter 18 of Title 47.

(b) Wages paid to prisoners employed by a prison industry wholly owned and operated by the District shall be paid from the Fund. Wages paid to prisoners employed by a prison industry operated pursuant to a prison industry joint venture agreement shall be paid by each private-sector employer who is a party to the agreement.

(c) Wages due each prisoner employed in a prison industry shall be disbursed according to a schedule of deductions which, after withholding District, federal, and state income taxes, shall be established by the Director.

(d) Except in the case of a prisoner employed in a prison industry approved under a PIE Program, the total amount deducted under subsection (c) of this section, including taxes withheld, shall not exceed 80% of gross wages and may include the following:

- (1) Reasonable charges paid to the District for room and board;
- (2) Contributions to the Crime Victims' Compensation Fund in accordance with § 4-544 [repealed];
- (3) Allocations for the support of the prisoner's family pursuant to statute, court order, or agreement;
- (4) Payment of any civil judgment resulting from the prisoner's criminal conduct; and
- (5) Payment of restitution or fines ordered by the sentencing court.

(e) In the case of a prisoner employed in a prison industry approved under the PIE Program, the total amount deducted under subsection (c) of this section, including taxes withheld, shall not exceed 80% of gross wages and may include the following:

- (1) Reasonable charges imposed by the District for room and board;
- (2) Contributions to the Crime Victims' Compensation Fund in accordance with § 4-544 [repealed], but only if the amount of the contributions is not less than 5% or more than 20% of the prisoner's gross wages; and
- (3) Allocations for the support of the prisoner's family pursuant to statute court order or agreement.

(f) The remaining 20% of the wage payment shall be available to the prisoner for the purchase of commissary items for personal use and for deposit in a personal account established for each prisoner by the Department.

(g) The Director shall establish procedures to provide each prisoner employed in a prison industry with a regular accounting showing gross wages earned, amount deducted in each category of deductions, and the amount credited to the prisoner's personal account maintained by the Department. All wages credited to the prisoner's personal account shall be made available to the prisoner at the time of release. The prisoner may draw upon funds in his or her personal account for any legal purpose consistent with Department rules.

(May 8, 1996, D.C. Law 11-117, § 12, 43 DCR 1179.)

Section references. — This section is referred to in §§ 4-544 and 24-231.08.

Prior Codifications. — 1981 Ed., § 24-458.11.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

§ 24-231.12. Workers' compensation insurance.

(a) The requirements of Chapter 15 of Title 32 shall apply to prisoners employed in any prison industries program that is approved under the PIE Program. Nothing in this section shall be construed as requiring Workers' Compensation Act or comparable insurance benefits for prisoners employed in a prison industry that is not federally approved under that program.

(b) The Director or the parties to a prison industry joint venture agreement may purchase insurance to protect against the risk of loss, theft, or damage of finished or unfinished products produced by a prison industry wherever these products, equipment, materials, and supplies are located while in the possession of the Department or a prison industry, in transit to or from the possession of the Department or a correctional industry, or in storage. The cost of the insurance shall be paid from the Fund if such payment is authorized by Congress in an appropriations act.

(May 8, 1996, D.C. Law 11-117, § 13, 43 DCR 1179.)

Section references. — This section is referred to in § 24-231.04.

Prior Codifications. — 1981 Ed., § 24-458.12.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

§ 24-231.13. Annual report; annual inventory.

(a) The Director shall provide the Mayor and the Council with an annual report on the prison industries program and the Fund no later than December 1 of each year for the fiscal year ending September 30 of the preceding year.

(b) The report shall be prepared according to generally accepted accounting principles and shall include:

(1) A description of each prison industry, including the terms of any prison industry joint venture agreements establishing the industry, the quantities of goods and services produced, and an itemized accounting of purchasers, sales, and receipts;

(2) The number of prisoners employed in each prison industries program;

(3) A profit-and-loss statement;

(4) Production costs, including overhead, purchase of materials and supplies, capital expenditures, and wages paid to prisoner employees and nonprisoner employees;

(5) The average length of time between the District government's receipt of orders and purchasers' receipt of the goods and services ordered; and

(6) The average length of time between purchasers' receipt of goods and services ordered and the Fund's receipt of payment.

(c) The Department shall prepare an annual inventory listing prison industries program equipment and materials on hand at the beginning and end of each fiscal year.

(May 8, 1996, D.C. Law 11-117, § 14, 43 DCR 1179.)

Prior Codifications. — 1981 Ed., § 24-458.13. legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.
Legislative history of Law 11-117. — For

§ 24-231.14. Disposition of profits.

The Mayor is authorized to retain any accumulated profits from a prison industries program for the purpose of acquiring or improving personal property, or to increase working capital to planned operating levels in a prison industries program. The Mayor is also authorized to retain accumulated profits from a prison industries program for payments to inmates employed in a prison industries program as well as to other inmates.

(May 8, 1996, D.C. Law 11-117, § 15, 43 DCR 1179.)

Prior Codifications. — 1981 Ed., § 24-458.14. legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.
Legislative history of Law 11-117. — For

§ 24-231.15. Transfer of assets.

All assets which, on May 8, 1996, are components of the Correctional Industries Fund, as created by § 24-271 [repealed], shall be transferred to the Fund created in § 24-231.02.

(May 8, 1996, D.C. Law 11-117, § 16, 43 DCR 1179.)

Cross references. — Unemployment compensation, eligibility, see § 51-109.

Prior Codifications. — 1981 Ed., § 24-458.15.

Legislative history of Law 11-117. — For legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

Editor's notes. — Mayor authorized to issue rules: Section 19 of D.C. Law 11-117 provided that, in accordance with subchapter I of Chapter 5 of Title 2, the Mayor shall issue rules to implement this subchapter.

Subchapter V. Work Release Program.

§ 24-241.01. Authority granted to establish program.

There is hereby authorized to be established in the District of Columbia a work release program under which any person who is: (1) convicted of a misdemeanor or of violating a municipal regulation or an act of Congress in the nature of a municipal regulation, and is sentenced to serve in a penal institution a term of 1 year or less; (2) imprisoned for nonpayment of a fine, or for contempt of court; or (3) committed to jail after revocation of probation pursuant to § 24-304, may, whenever the judge of the sentencing court is satisfied that the ends of justice and the best interests of society as well as of such person would be subserved thereby or whenever after service by the person of $\frac{1}{3}$ of his or her sentence, the Board of Parole is satisfied that the ends of justice and the best interests of society as well as of the sentenced person

would be served thereby, be granted the privilege of a work release for the purpose of working at his employment or seeking employment. Such a work release privilege may also be granted, in the discretion of the sentencing court or the Director of the Department of Corrections, whenever there exist such special circumstances as merit the granting of the privilege. As used in this subchapter, the word "sentence" and its derivatives shall be construed to include sentencing, imprisonment, and commitment as referred to in this section.

(Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 2; Mar. 10, 1983, D.C. Law 4-202, § 5, 30 DCR 173; June 3, 1997, D.C. Law 11-273, § 4(a), 43 DCR 6168.)

Section references. — This section is referred to in § 24-241.02.

Prior Codifications. — 1981 Ed., § 24-461. 1973 Ed., § 24-461.

Emergency legislation. — For temporary amendment of section, see § 4(a) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 4(a) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and § 4(a) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Legislative history of Law 4-202. — Law 4-202, the "District of Columbia Sentencing Improvements Act of 1982," was introduced in Council and assigned Bill No. 4-120, which was

referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-286 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-273. — Law 11-273, the "Zero Tolerance for Guns Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-153, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-431 and transmitted to both Houses of Congress for its review. D.C. Law 11-273 became effective on June 3, 1997.

CASE NOTES

ANALYSIS

Conditions of release.
Court orders.
Eligibility criteria.
Escape.
Felons.
Insanity acquitees.

Conditions of release.

A reading of this section and § 24-463 together suggests that a court has the obligation to consider the interests of society as well as those of the offender and to frame the conditions of work release accordingly. *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982).

The reduction of a sentence from incarceration to work release may be conditioned on the payment of restitution or reparation. *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982).

Court orders.

Assuming that petitioner, claiming denial of constitutional rights meant to cite the District of Columbia statute establishing a work release

program, it could not be held that district court abused discretion in finding that there were no special circumstances which merited the granting of work release privilege to petitioner. D.C. Code §§ 24-461, 24-463. *Green v. United States*, 481 F.2d 1140, 1973 U.S. App. LEXIS 8690 (C.A.D.C. 1973).

Expansive language of work release statute, together with remedial nature of statute, provide judge with greater, not fewer, options in constructing appropriate work release plan; when granting work release, judge is not limited to fixing details of the time of the prisoner's release and his return to confinement, and transportation to and from place of work. D.C. Code 1981, §§ 24-461, 24-463. *Davidson v. United States*, 467 A.2d 1282, 1983 D.C. App. LEXIS 511 (1983).

Placement in work release program is available only by court order. D.C. Code § 24-461 et seq. *Armstead v. United States*, 310 A.2d 255, 1973 D.C. App. LEXIS 359 (1973).

Misdemeanant's sentence of "six months with narcotic treatment in vocational rehabilitation" did not constitute explicit court order necessary

for valid placement of misdemeanor in work release program. D.C. Code § 24-461 et seq. *Armstead v. United States*, 310 A.2d 255, 1973 D.C. App. LEXIS 359 (1973).

Department of Corrections is not privileged to interpret ambiguous order of trial judge as authorizing work release when order does not specifically so provide. D.C. Code § 24-461 et seq. *Armstead v. United States*, 310 A.2d 255, 1973 D.C. App. LEXIS 359 (1973).

Eligibility criteria.

District of Columbia's laws and regulations created no liberty interest in placement in prison work furlough program; while Department of Corrections' order did contain rigorous eligibility criteria, it lacked mandatory language requiring officials to admit prisoners to the furlough program if they met those criteria. U.S. Const. Amend. 5; 42 U.S.C. § 1983; D.C. Code 1981, § 24-461. *Williams v. Moore*, 899 F. Supp. 711, 1995 U.S. Dist. LEXIS 14666 (1995), appeal dismissed by 1996 U.S. App. LEXIS 30512 (D.C. Cir. Oct. 7, 1996).

Escape.

Application of prison break statute [D.C. Code 1981, § 22-2601] to escapees from half-way house did not conflict with legislative history or purpose of work-release statute [D.C. Code 1981, § 24-461 et seq.], and, therefore, petitioners' could be convicted under prison break statute of failing to return to place of confinement. D.C. Code 1981, § 24-465(b). *Gonzalez v. United States*, 498 A.2d 1172, 1985 D.C. App. LEXIS 497 (1985).

Defendants, who, in course of serving sentences for felonies, were transferred to a half-way house, were guilty of escape from penal

institution when they left the half-way house and did not return. D.C. Code §§ 22-2601, 24-461, 24-462, 24-465, 24-465(b); Organization Order No. 7, pt. 3, subd. B, D.C. Code Tit. 1, Appendix III. *United States v. Venable*, 316 A.2d 857, 1974 D.C. App. LEXIS 393 (1974).

Felons.

District of Columbia Work Release Act applies only to three enumerated classes of persons imprisoned for minor offenses, not to imprisoned felons; as to the latter, work release is granted at the discretion of the Attorney General under the provisions of federal statute. D.C. Code § 24-461 et seq.; 18 U.S.C. § 4082. *Contee v. United States*, 315 A.2d 149, 1974 D.C. App. LEXIS 357 (1974).

Insanity acquittees.

Government did not waive appellate review of claim that insanity acquittee could not be conditionally released from hospital under work release or furlough statute unless he was granted parole on concurrent criminal sentence by failing to raise claim in opposition to defendant's motion for conditional release, where government did raise work release statute in opposition to defendant's motion for reconsideration and issues raised by defendant required interpretation of both statutes. D.C. Code 1981, §§ 24-461, 24-482. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

Insanity acquittee, who was also serving concurrent criminal sentence for first-degree burglary while armed, was ineligible for work release or furlough from hospital, where Parole Board denied parole on criminal conviction. D.C. Code 1981, §§ 24-461, 24-482. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

§ 24-241.02. Recommendations; order of court or Board of Parole required.

At the time of imposition of sentence, the probation officers of the court or the Director of the Department of Corrections, may recommend to, or the person sentenced may request, the sentencing court that such person be granted the privilege of work release. At any time subsequent to the imposition of sentence, the person sentenced may request the sentencing court or the Director of the Department of Corrections that such person be granted the privilege of work release. No person shall be given work release privileges except by order of the sentencing court or the Director of the Department of Corrections, or by order of the Board of Parole pursuant to § 24-241.01.

(Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 3; Mar. 10, 1983, D.C. Law 4-202, § 6, 30 DCR 173; June 3, 1997, D.C. Law 11-274, § 19(c), 44 DCR 1232.)

Prior Codifications. — 1981 Ed., § 24-462. 1973 Ed., § 24-462.

Emergency legislation. — For temporary amendment of section, see § 4(b) of the Zero

Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and see § 4(b) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Legislative history of Law 4-202. — For legislative history of D.C. Law 4-202, see Historical and Statutory Notes following § 24-241.01.

Legislative history of Law 11-274. — Law 11-274, the "Sex Offender Registration Act of 1996," was introduced in Council and assigned Bill No. 11-386, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-510 and transmitted to both Houses of Congress for its review. D.C. Law 11-274 became effective on June 3, 1997.

CASE NOTES

ANALYSIS

Escape.

Insanity acquitees.

Escape.

Defendants, who, in course of serving sentences for felonies, were transferred to a half-way house, were guilty of escape from penal institution when they left the half-way house and did not return. D.C. Code §§ 22-2601, 24-461, 24-462, 24-465, 24-465(b); Organization Order No. 7, pt. 3, subd. B, D.C. Code Tit. 1, Appendix III. *United States v. Venable*, 316 A.2d 857, 1974 D.C. App. LEXIS 393 (1974).

Insanity acquitees.

Government did not waive appellate review of claim that insanity acquittee could not be conditionally released from hospital under work release or furlough statute unless he was granted parole on concurrent criminal sentence

by failing to raise claim in opposition to defendant's motion for conditional release, where government did raise work release statute in opposition to defendant's motion for reconsideration and issues raised by defendant required interpretation of both statutes. D.C. Code 1981, §§ 24-461, 24-482. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

Insanity acquittee could not be conditionally released from hospital before being granted parole from concurrent criminal conviction. D.C. Code 1981, §§ 24-204(a), 24-301, 24-425. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

Insanity acquittee, who was also serving concurrent criminal sentence for first-degree burglary while armed, was ineligible for work release or furlough from hospital, where Parole Board denied parole on criminal conviction. D.C. Code 1981, §§ 24-461, 24-482. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

§ 24-241.03. Conditions for release.

The Director of the Department of Corrections shall state in writing the terms and conditions under which a person granted work release privileges may be released from actual custody during the time necessary to proceed to the person's place of employment or other authorized places, perform specified activities, and return to a place of confinement designated by the Director of the Department of Corrections.

(Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 4; June 3, 1997, D.C. Law 11-273, § 4(b), 43 DCR 6168.)

Prior Codifications. — 1981 Ed., § 24-463. 1973 Ed., § 24-463.

Emergency legislation. — For temporary amendment of section, see § 4(b) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 4(b) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, De-

cember 4, 1996, 43 DCR 6651), and § 4(b) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Legislative history of Law 11-273. — For legislative history of D.C. Law 11-273, see Historical and Statutory Notes following § 24-241.01.

CASE NOTES

In general.

Assuming that petitioner, claiming denial of constitutional rights meant to cite the District of Columbia statute establishing a work release program, it could not be held that district court abused discretion in finding that there were no special circumstances which merited the granting of work release privilege to petitioner. D.C. Code §§ 24-461, 24-463. *Green v. United States*, 481 F.2d 1140, 1973 U.S. App. LEXIS 8690 (C.A.D.C. 1973).

Expansive language of work release statute, together with remedial nature of statute, provide judge with greater, not fewer, options in constructing appropriate work release plan; when granting work release, judge is not limited to fixing details of the time of the prisoner's release and his return to confinement, and transportation to and from place of work. D.C. Code 1981, §§ 24-461, 24-463. *Davidson v. United States*, 467 A.2d 1282, 1983 D.C. App. LEXIS 511 (1983).

Placement in work release program is available only by court order. D.C. Code § 24-461 et seq. *Armstead v. United States*, 310 A.2d 255, 1973 D.C. App. LEXIS 359 (1973).

Department of Corrections is not privileged to interpret ambiguous order of trial judge as authorizing work release when order does not specifically so provide. D.C. Code § 24-461 et seq. *Armstead v. United States*, 310 A.2d 255, 1973 D.C. App. LEXIS 359 (1973).

A reading of § 24-461 and this section together suggests that a court has the obligation to consider the interests of society as well as those of the offender and to frame the conditions of work release accordingly. *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982).

The reduction of a sentence from incarceration to work release may be conditioned on the payment of restitution or reparation. *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982).

§ 24-241.04. Regulations; individual plans.

The Council of the District of Columbia is authorized to promulgate from time to time such rules and regulations as it deems necessary for the administration by the Department of Corrections of the work release program.

(Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 5; June 3, 1997, D.C. Law 11-273, § 4, 43 DCR 6168.)

Prior Codifications. — 1981 Ed., § 24-464. 1973 Ed., § 24-464.

Emergency legislation. — For temporary amendment of section, see § 4(d) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986) and § 4(c) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), see § 4(c) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Legislative history of Law 11-273. — For legislative history of D.C. Law 11-273, see Historical and Statutory Notes following § 24-241.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(426) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-241.05. Suspension of work release privilege; violations of work release plan.

(a) The Director of the Department of Corrections may suspend or revoke

the work release privilege for any breach of discipline or infraction of institution regulations. The Court may revoke the work release privilege at any time, either upon its own motion or upon recommendation of the Director of the Department of Corrections.

(b) Any prisoner who willfully fails to return at the time and to the place of confinement designated in his work release plan shall be fined not more than \$1,000 or imprisoned not more than 180 days, or both, such sentence of imprisonment to run consecutively with the remainder of previously imposed sentences. All prosecutions for violation of this subsection shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants.

(Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 6; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); June 3, 1997, D.C. Law 11-273, § 4(d), 43 DCR 6168.)

Prior Codifications. — 1981 Ed., § 24-465. 1973 Ed., § 24-465.

Emergency legislation. — For temporary amendment of section, see § 4(e) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 4(d) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, De-

cember 4, 1996, 43 DCR 6651), and see § 4(d) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Legislative history of Law 11-273. — For legislative history of D.C. Law 11-273, see Historical and Statutory Notes following § 24-241.01.

CASE NOTES

Failure to return to confinement.

Even assuming defendant could have been prosecuted for misdemeanor failure to return rather than felony escape, the prosecution had discretion to charge him with the felony offense. *Williams v. United States*, 832 A.2d 158, 2003 D.C. App. LEXIS 556 (2003).

Prison break statute [D.C. Code 1981, § 22-2601] and work release "failure to return" statute [D.C. Code 1981, § 24-465(b)] do not conflict, but merely provide alternative means of prosecuting escape from halfway house by misdemeanor. *Gonzalez v. United States*, 498 A.2d 1172, 1985 D.C. App. LEXIS 497 (1985).

Application of prison break statute [D.C. Code 1981, § 22-2601] to escapees from halfway house did not conflict with legislative history or purpose of work-release statute [D.C. Code 1981, § 24-461 et seq.], and, therefore, petitioners' could be convicted under prison break statute of failing to return to place of confinement. D.C. Code 1981, § 24-465(b). *Gonzalez v. United States*, 498 A.2d 1172, 1985 D.C. App. LEXIS 497 (1985).

Availability of two different penalties under prison break statute and statute governing work-release prisoner's failure to return to designated place of confinement for escapes from halfway houses did not violate notice provision of due process clause. D.C. Code 1981, §§ 22-

2601, 24-465; U.S. Const. Amends. 5, 14. *Gonzalez v. United States*, 498 A.2d 1172, 1985 D.C. App. LEXIS 497 (1985).

Prosecution of defendant, who failed to return to halfway house after authorized absence, for prison breach was not precluded by fact that work release statute also provided punishment for failure to return to halfway house. D.C. Code §§ 22-2601, 22-3427, 24-465. *Days v. United States*, 407 A.2d 702, 1979 D.C. App. LEXIS 540 (1979).

Defendants, who, in course of serving sentences for felonies, were transferred to a halfway house, were guilty of escape from penal institution when they left the half-way house and did not return. D.C. Code §§ 22-2601, 24-461, 24-462, 24-465, 24-465(b); Organization Order No. 7, pt. 3, subd. B, D.C. Code Tit. 1, Appendix III. *United States v. Venable*, 316 A.2d 857, 1974 D.C. App. LEXIS 393 (1974).

Misdemeanant who was placed in halfway house for participation in work release program due to administrative error rather than by court order required for valid placement, and who left and failed to return to halfway house, was properly prosecuted under statute which prescribes punishment for escape from penal institution rather than statute which prescribes punishment for violation of work release plan. D.C. Code §§ 22-2601, 24-465(b).

Armstead v. United States, 310 A.2d 255, 1973 D.C. App. LEXIS 359 (1973).

§ 24-241.06. Trust fund for earnings; disbursements.

The Mayor is authorized to include in individual work release plans provisions for the collection of the wages, salary, earnings, and other income of each gainfully employed prisoner when paid, or require that the same be surrendered when received, less payroll deductions required or authorized by law, and to deposit the amount so received in a trust fund account in the Treasury of the United States. Such wages, salary, or earnings in the hands of either the employer or the Mayor during such prisoner's terms shall not be subject to garnishment or attachment. The Mayor is further authorized in individual work release plans to provide for disbursements from the trust fund account established under this section for any or all of the following purposes: (1) the payment of an amount not to exceed the lesser of 20% of the prisoner's earnings, or \$4 per day, as the cost of his room and board; (2) necessary travel expenses to and from work or other business and incidental expenses of the prisoner; (3) support of the prisoner's dependents, if any; (4) support of minor children pursuant to court order; (5) payment of court fines or forfeitures; or (6) payment, either in full or ratably, of the prisoner's debts which have been acknowledged by him in writing or have been reduced to judgment. The balance of such earnings, if any there be after payments therefrom for the foregoing purposes, shall be paid to the prisoner upon the completion of the period during which he is subject to confinement.

(Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 7.)

Section references. — This section is referred to in § 24-241.07.

Prior Codifications. — 1981 Ed., § 24-466. 1973 Ed., § 24-466.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Restitution.

Statute which permits work release plans to include provision for using money earned by prisoner, in part, as payment, either in full or ratably, of prisoner's debts which have been reduced to judgment, was applicable to autho-

rize conditioning prisoner's work release upon restitution of victim. D.C. Code 1981, §§ 22-461 et seq., 24-466(6). *Davidson v. United States*, 467 A.2d 1282, 1983 D.C. App. LEXIS 511 (1983).

§ 24-241.07. Support of dependents.

Payments for support pursuant to § 24-241.06 shall be made through the

clerks of the respective courts. In cases where there is no outstanding court order of support or judgment against the prisoner, the Director, Department of Public Welfare, or his designated agent, shall, after investigation, report to the Mayor the amounts deemed necessary for support of the prisoner's dependents.

(Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 8.)

Prior Codifications. — 1981 Ed., § 24-467.
1973 Ed., § 24-467.

Transfer of Functions. — Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganiza-

tion Plan No. 2 of 1979, dated February 21, 1980.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-241.08. Designation of Mayor as representative of Attorney General.

The Attorney General of the United States may, in order to carry out the purposes of this subchapter, designate the Mayor as his authorized representative to perform the functions vested in him by § 24-201.26.

(Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 9.)

Prior Codifications. — 1981 Ed., § 24-468.
1973 Ed., § 24-468.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

United States Attorney General possessed the power to determine the availability, suitability, and appropriateness of District of Columbia correctional facilities for purposes of

deciding whether to assign District of Columbia prisoners to District prisons or federal prisons. D.C. Code 1981, § 24-425. *United States v. District of Columbia*, 703 F. Supp. 982, 1988 U.S. Dist. LEXIS 16527 (1988).

§ 24-241.09. “Mayor” defined; authority of Commissioners.

(a) As used in this subchapter the term “Mayor” means the Mayor of the District of Columbia or his designated agents.

(b) Nothing in this subchapter shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan No. 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Commissioners or in any office or agency under the jurisdiction and control of said Commissioners may be performed by the Commissioners or may be delegated by said Commissioners in accordance with § 3 of such plan.

(Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 10.)

Prior Codifications. — 1981 Ed., § 24-469. 1973 Ed., § 24-469.

References in text. — Reorganization Plan No. 5 of 1952, referred to in subsection (b) of this section, is set out in its entirety in Volume 1.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-241.10. Prisoner not agent, employee or servant of District.

Except when employed and paid by the District of Columbia for the performance of work for the District of Columbia government, no prisoner employed in the free community under the provisions of this subchapter shall, while working in such employment in the free community or going to or from such employment, be deemed to be an agent, employee, or servant of the District of Columbia government.

(Nov. 10, 1966, 80 Stat. 1521, Pub. L. 89-803, § 12.)

Prior Codifications. — 1981 Ed., § 24-470. 1973 Ed., § 24-470.

*Subchapter VI. Resocialization Furlough Program.***§ 24-251.01. Definitions.**

For the purposes of this subchapter:

(1) The term "Department" means the District of Columbia Department of Corrections.

(2) The term "Director" means the Director of the Department of Corrections, or his designated agent.

(3) The term "furlough" means any extension of the limits of the place of confinement of a sentenced prisoner for the purposes outlined in § 24-251.03, and when said purposes are in agreement with the goals of § 24-211.02 when the person sentenced is not escorted by a United States marshal or an officer or employee of the District of Columbia.

(4) The term "minimum custody status" means that status of an individual who:

(A) In the case of an individual who has been sentenced to serve for a definite number of years, is within 12 months of his earliest possible date of parole;

(B) In the case of an individual who has been sentenced to serve for a sentence of not less than a minimum period, has served for at least one-half of that minimum period;

(C) In the case of an individual who has been sentenced to serve for an indefinite period, has served for 12 months; or

(D) In the case of an individual who has been sentenced to serve for a definite period of less than 18 months has served for at least one-half of that period.

(5) The term "resident" means an individual confined, after conviction and sentencing, in an institution or facility of the District of Columbia operated by the Department of Corrections.

(6) The term "committee" means an institutional review committee established pursuant to § 24-251.06.

(Apr. 23, 1977, D.C. Law 1-130, § 2, 23 DCR 9694.)

Prior Codifications. — 1981 Ed., § 24-481.
1973 Ed., § 24-481.

Legislative history of Law 1-130. — Law 1-130, the "Resocialization Furlough Act of 1976," was introduced in Council and assigned Bill No. 1-223, which was referred to the Committee on Public Safety. The Bill was adopted

on first and second readings on July 20, 1976 and November 23, 1976, respectively. Enacted without signature by the Mayor on January 19, 1977, it was assigned Act No. 1-224 and transmitted to both Houses of Congress for its review.

§ 24-251.02. Authority to grant furloughs.

(a) The Mayor of the District of Columbia, or his designated agent, may grant a resocialization furlough to any eligible resident for the purposes specified in this subchapter and according to the procedures provided for in this subchapter. The decision to grant or deny a furlough shall not be made on the basis of rewarding a resident for good behavior nor for punishing

misbehavior. Furloughs shall not be used to shorten sentences; any resident furloughed shall be considered, while on furlough, to still be in custody, and time spent on furlough shall be credited toward the remainder of his sentence.

(b) For the purposes of this subchapter, an eligible resident shall be any resident who:

- (1) Has attained minimum custody status;
- (2) Has demonstrated responsible attitudes and behavior in the institution or facility so that there is reasonable assurance that he will comply fully with the conditions of the furlough;
- (3) Has received, where applicable, a favorable recommendation by the appropriate committee; and
- (4) Is mentally, physically, and financially capable of completing the furlough without escort or assistance from any officer or employee of the Department after his release from the institution or facility.

(c) Any individual who is incarcerated in any institution or facility operated by the Department after being convicted of having violated either § 22-2101 (relating to first degree murder), § 22-2102 (relating to first degree murder), or § 22-2103 (relating to second degree murder), § 22-4801 [repealed] (relating to rape), or § 22-3801 [repealed] (relating to indecent acts with a minor) shall not be eligible for any furlough under the provisions of this subchapter, except where such individual is within 12 months of a firm release date.

(d) Any eligible resident who is within 12 months of a firm release date or who is participating in an approved work training or higher education program may be considered for 1 furlough per month. All other eligible residents may be considered for 1 furlough every 3 months.

(Apr. 23, 1977, D.C. Law 1-130, § 3, 23 DCR 9694.)

Prior Codifications. — 1981 Ed., § 24-482. 1973 Ed., § 24-482.

Legislative history of Law 1-130. — For

legislative history of D.C. Law 1-130, see Historical and Statutory Notes following § 24-251.01.

CASE NOTES

Insanity acquitees.

Government did not waive appellate review of claim that insanity acquittee could not be conditionally released from hospital under work release or furlough statute unless he was granted parole on concurrent criminal sentence by failing to raise claim in opposition to defendant's motion for conditional release, where government did raise work release statute in opposition to defendant's motion for reconsideration and issues raised by defendant required

interpretation of both statutes. D.C. Code 1981, §§ 24-461, 24-482. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

Insanity acquittee, who was also serving concurrent criminal sentence for first-degree burglary while armed, was ineligible for work release or furlough from hospital, where Parole Board denied parole on criminal conviction. D.C. Code 1981, §§ 24-461, 24-482. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

§ 24-251.03. Purposes of furloughs; furloughs over 12 hours.

(a) The Mayor, or his designated agent, may grant a furlough, except as provided in subsection (c) of this section, to any eligible resident:

(1) In order to visit the bedside of a dying relative, or to attend the funeral of a relative, in the Washington metropolitan area;

(2) Upon the recommendation of the institutional review committee, in order to call upon prospective employers in the Washington metropolitan area, enroll in an educational institution or program, obtain suitable housing prior to release, or to finalize parole supervision plans with an officer or employee of the Department; or

(3) Upon the recommendation of the institutional review committee, to participate in family and approved community, religious, or educational, social, civic, and recreational activities, when it is determined that such participation will directly facilitate the transition from life in the facility or institution to life in the community.

(b) The Mayor, or his designated agent, may grant a furlough for the purposes specified in paragraph (1) of subsection (a) of this section outside of the Washington metropolitan area, so long as such furlough does not exceed 72 hours.

(c) The Mayor, or his designated agent, may grant a furlough to an eligible resident for longer than 12 hours, but for no longer than 72 hours, where he finds that, based on a report from the institutional review committee, such eligible resident:

(1) Has demonstrated complete institutional adjustment;

(2) Is strongly motivated to benefit from the program;

(3) Is considered to have exceptional potential for rehabilitation; and

(4) Will not, while on furlough, constitute a threat or danger to the community.

(d) For the purposes of this section, the term "relative" means a spouse, child (including a step-child, adopted child, or child to whom the resident, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(e) In the event any eligible resident applies for a furlough for 1 of the reasons specified in paragraph (1) of subsection (a) of this section, verification of the death or seriousness of the illness, as the case may be, of the relative must be obtained from the attending physician, hospital physician, or funeral home director (as applicable), before such furlough may be granted.

(Apr. 23, 1977, D.C. Law 1-130, § 4, 23 DCR 9694; June 3, 1997, D.C. Law 11-275, § 17, 44 DCR 1408.)

Section references. — This section is referred to in § 24-251.01.

Prior Codifications. — 1981 Ed., § 24-483. 1973 Ed., § 24-483.

Legislative history of Law 1-130. — For legislative history of D.C. Law 1-130, see Historical and Statutory Notes following § 24-251.01.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical

Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

§ 24-251.04. Procedures.

(a) Each caseworker or counselor on the staff of the Department who is assigned to investigate an application for a furlough shall: (1) verify the reasons given by the applicant for the furlough; (2) determine whether the furlough requested and the applicant meet the requirements of this subchapter; and (3) ascertain whether the furlough will contribute to the attainment of the correctional goals of the applicant. If the caseworker or counselor finds that the request meets these criteria, and the provisions of this subchapter, then he shall prepare a memorandum recommending the granting of the furlough. Such memorandum shall be reviewed by the appropriate supervisory personnel and finally by the Mayor, or his designated agent. Each such memorandum shall contain the name of the resident concerned, his Department number, the crime for which he was sentenced, the reason for the requested furlough, all factual information (including its verification data), and a statement by the caseworker or counselor on how the furlough is expected to contribute to the attainment of the resident concerned correctional goals and the date of the last furlough granted to such resident.

(b) Each resident being released on furlough will be advised in writing of the conditions of his furlough and will be given a thorough explanation of such conditions. In addition, each resident will be advised that the wilful failure to remain within the extended limits of his confinement, or his failure to return to a designated place within the time prescribed may be deemed an escape, punishable by a fine of not more than \$5,000 or imprisonment for not longer than 5 years, or both. This furlough release authorization form shall be signed by the resident concerned, indicating his understanding of the conditions of the furlough and his willingness to comply with such conditions. Such form will also be signed by the person authorizing such furlough. The resident concerned will be given a copy of such form and instructed to keep it on his person at all times while on furlough.

(c) If a resident on furlough fails to return to a designated place within the time specified in the furlough authorization form signed by him, or if there is reason to believe that he has violated the conditions of his furlough after release, the Administrator shall immediately attempt to contact the resident in order to have him returned to the institution or facility from which he was released. If a furloughed resident cannot be located within 2 hours after the scheduled time for his return, he shall be deemed to be an escapee, subject to the appropriate actions taken under Departmental Order 5120.1A.

(Apr. 23, 1977, D.C. Law 1-130, § 5, 23 DCR 9694.)

Prior Codifications. — 1981 Ed., § 24-484.
1973 Ed., § 24-484.
Legislative history of Law 1-130. — For

legislative history of D.C. Law 1-130, see Historical and Statutory Notes following § 24-251.01.

§ 24-251.05. Records and reports.

(a) Residents being released on furlough shall be reported as “furloughed” on appropriate Departmental records and statistical forms, identifying such

movement as a furlough. Because time spent on furlough is creditable toward the service of a sentence, such status will not preclude the earning of good time or pay.

(b) Each caseworker or counselor assigned to handle a furloughed resident will, upon the completion of each such furlough, prepare a brief report to include:

- (1) The name and Department number of the furloughed resident to whom the report relates;
- (2) The purpose of the furlough being completed;
- (3) A statement of the results of the furlough, including an explanation of any unusual circumstances or events;
- (4) The reporter's assessment of the circumstances or events in relation to the resident's correctional goals; and
- (5) The dates of any previous furloughs granted, including the one to which the report relates.

(c) Copies of all executed furlough release authorization forms shall be kept in the office of the Administrator. Within 5 calendar days before the beginning of each month, the information on these forms (in digested form) will be reported to the designee of the Director. These reports will include:

- (1) The name and Department number of each resident who has been granted a furlough during the reporting period;
- (2) Sentence data relating to such resident, including his earliest release date;
- (3) The purpose of the furlough;
- (4) The beginning and ending dates of the furlough;
- (5) The name of the officer authorizing the furlough;
- (6) The number of furloughs previously granted to such resident; and
- (7) The total number of furloughs granted to all residents during the reporting period.

(Apr. 23, 1977, D.C. Law 1-130, § 6, 23 DCR 9694.)

Prior Codifications. — 1981 Ed., § 24-485.
1973 Ed., § 24-485.

legislative history of D.C. Law 1-130, see Historical and Statutory Notes following § 24-251.01.

Legislative history of Law 1-130. — For

§ 24-251.06. Institutional review committees.

There shall be established, within each facility and institution of the Department, an institutional review committee composed of a psychologist, a senior correctional officer, and an academician. Each committee shall be appointed by the Director, or his designee. It shall be the function of each committee to examine the progress and adjustments of the residents of the facility or institution in which the committee was established, and to make recommendations to the appropriate person with respect to the applications for furloughs of such residents. In making such recommendations, each committee shall rely generally upon consideration of the applicant's disciplinary record, psychological evaluation, work and training participation, and attitudinal and behavior adjustment.

(Apr. 23, 1977, D.C. Law 1-130, § 7, 23 DCR 9694.)

Section references. — This section is referred to in § 24-251.01.

Prior Codifications. — 1981 Ed., § 24-486. 1973 Ed., § 24-486.

Legislative history of Law 1-130. — For legislative history of D.C. Law 1-130, see Historical and Statutory Notes following § 24-251.01.

§ 24-251.07. Report to Council.

The Director shall submit to the Council's Committee on Public Safety, semiannually (on January 31st and July 31st of each year), a report on the furlough program conducted during the immediately preceding period. The report shall include the number of furloughs granted during such reporting period, the types of furloughs so granted, a listing of all instances where a furloughed resident failed to abide by the conditions of his furlough, an analysis of each of the furloughed residents, giving the sex, sentence data, and other relevant information relating to each such resident, and such other information as the Director may deem necessary and relevant. The Director shall formulate an overall evaluation and submit same as a part of the report required by this section.

(Apr. 23, 1977, D.C. Law 1-130, § 8, 23 DCR 9694.)

Prior Codifications. — 1981 Ed., § 24-487. 1973 Ed., § 24-487.

Legislative history of Law 1-130. — For

legislative history of D.C. Law 1-130, see Historical and Statutory Notes following § 24-251.01.

§ 24-251.08. Severability.

If any section or provision of this subchapter is held to be unconstitutional or otherwise invalid in its application to any person or circumstance, such unconstitutionality or invalidity shall not affect the applicability of that section or provision, or the applicability of the remaining sections or provisions of this subchapter, to other persons or circumstances.

(Apr. 23, 1977, D.C. Law 1-130, § 9, 23 DCR 9694.)

Cross references. — Non-health related occupations and professions, regulation by Mayor, excepted occupations, see § 47-2853.04.

Prior Codifications. — 1981 Ed., § 24-488. 1973 Ed., § 24-488.

Legislative history of Law 1-130. — For legislative history of D.C. Law 1-130, see Historical and Statutory Notes following § 24-251.01.

Subchapter VII. Correctional Treatment Facility.

§ 24-261.01. Rules.

For the purposes of this subchapter, the term:

- (1) "CTF" means the Correctional Treatment Facility.
- (2) "Deadly force" means force which would likely cause death or serious bodily injury.
- (3) "Non-deadly force" means force that normally would neither cause death nor serious bodily injury.

(4) "Private correctional officer" means any full-time or part-time employee of the private operator of the Correctional Treatment Facility or any other privately-operated prison facility housing inmates in the District of Columbia for the District of Columbia Department of Corrections or the Federal Bureau of Prisons, or the subcontractor of any private operator housing inmates in the District of Columbia for the District of Columbia Department of Corrections or the Federal Bureau of Prisons, whose primary responsibility is the supervision, protection, care, and control of inmates assigned to the Correctional Treatment Facility or any other privately-operated prison facility in the District of Columbia.

(5) "Private operator" means any individual, partnership, corporation, or incorporated association bound by contract with the District of Columbia or the United States to operate the Correctional Treatment Facility or any other prison facility housing inmates in the District of Columbia for the District of Columbia Department of Corrections or the Federal Bureau of Prisons.

(June 3, 1997, D.C. Law 11-276, § 2, 44 DCR 1416; May 28, 1999, D.C. Law 12-281, § 2(a)(2), 45 DCR 7991.)

Section references. — This section is referred to in § 47-2853.04.

Prior Codifications. — 1981 Ed., § 24-495.1.

Temporary Amendment of Section. — Section 2(a) of D.C. Law 12-164 rewrote (4) and (5).

Section 4(b) of D.C. Law 12-164 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of subchapter, see §§ 2-6 of the Correctional Treatment Facility Congressional Review Emergency Act of 1997 (D.C. Act 12-32, March 11, 1997, 44 DCR 1908).

For temporary amendment of section, see § 2(a) of the Correctional Treatment Facility Emergency Amendment Act of 1998 (D.C. Act 12-315, March 31, 1998, 45 DCR 2126), § 2(a) of the Correctional Treatment Facility Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-388, June 29, 1998, 45 DCR 4625), and § 2(a) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emergency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Legislative history of Law 11-276. — Law 11-276, the "Correction Treatment Facility Act of 1996," was introduced in Council and assigned Bill No. 11-908, which was referred to

the Committee on the Judiciary and the Committee of the Whole. The Bill was adopted on first and second readings on December 3, 1996, and December 17, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-523 and transmitted to both Houses of Congress for its review. D.C. Law 11-276 became effective on June 3, 1997.

Legislative history of Law 12-164. — Law 12-164, the "Correctional Treatment Facility Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-578. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was assigned Act No. 12-335 and transmitted to both Houses of Congress for its review. D.C. Law 12-164 became effective on October 10, 1998.

Legislative history of Law 12-281. — Law 12-281, the "Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-584, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 30 1998, and September 22, 1998, respectively. Signed by the Mayor on October 8, 1998, it was assigned Act No. 12-472 and transmitted to both Houses of Congress for its review. D.C. Law 12-281 became effective on May 28, 1999.

§ 24-261.02. Use of deadly and non-deadly force.

(a) A private correctional officer may carry firearms provided by the private operator only in the following situations:

(1) While patrolling the perimeter grounds of the CTF or any other privately-operated prison facility;

(2) While transporting inmates assigned to the CTF or to any other privately-operated prison facility;

(3) While pursuing inmates assigned to the CTF or to any other privately-operated prison facility who have escaped from the custody of the Department of Corrections or the Federal Bureau of Prisons; and

(4) During a state of emergency as determined by the Department of Corrections or the Federal Bureau of Prisons.

(b) The use of either deadly force or non-deadly force by a private correctional officer employed by the private operator shall at all times be governed by Department of Corrections Order 5010.9, as such order may from time to time be amended or modified. Notwithstanding the provisions of § 22-4504, a private correctional officer shall have the right to possess and use firearms provided by, and in the course of employment with, the private operator; provided, that such carrying and use is in accordance with the policy established by the Department of Corrections, as set forth in Department Order 5011.1, as such order may from time to time be amended or modified. A private correctional officer shall be authorized to use such firearms only as a last resort, and then only in accordance with Department Order 5011.1.

(c) For the purposes of this section, the private operator shall be considered an organization authorized to register firearms pursuant to subchapter I of Unit A of Chapter 25 of Title 7.

(d) Each private correctional officer shall be trained in the use of force and the use of firearms, in accordance with procedures that have been reviewed by the Department of Corrections. No employee of the private operator shall be authorized to carry and use firearms until such employee has successfully completed a training program for correctional officers that has been approved by the Department of Corrections.

(June 3, 1997, D.C. Law 11-276, § 3, 44 DCR 1416; May 28, 1999, D.C. Law 12-281, §§ 2(b), (c), 45 DCR 7991.)

Prior Codifications. — 1981 Ed., § 24-495.2.

Temporary Amendment of Section. — Section 2(b) of D.C. Law 12-164 added “or any other privately-operated prison facility” in (a)(1); added “or to any other privately-operated prison facility” in (a)(2) and (a)(3); added “or the Federal Bureau of Prisons” in (a)(3) and (a)(4); and, substituted “operator” for “contractor” in (c).

Section 4(b) of D.C. Law 12-164 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Correctional Treatment Facility Emergency Amendment Act of 1998 (D.C. Act 12-315, March 31, 1998, 45 DCR 2126), § 2(b) of the Correctional Treatment Facility Congressional Review Emergency Amendment Act of 1998 (D.C. Act

12-388, June 29, 1998, 45 DCR 4625), and § 2(b) and (c) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emergency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Section 4 of D.C. Act 12-388 provided for the application of the act.

Legislative history of Law 11-276. — For legislative history of D.C. Law 11-276, see Historical and Statutory Notes following § 24-261.01.

Legislative history of Law 12-164. — For legislative history of D.C. Law 12-164, see Historical and Statutory Notes following § 24-261.01.

Legislative history of Law 12-281. — For legislative history of D.C. Law 12-281, see Historical and Statutory Notes following § 24-261.01.

§ 24-261.02a. Registration of firearms for private operator.

(a) In order to register firearms, the private operator shall follow the following procedures:

(1) To register for interim approval, the private operator shall provide the Chief of the Metropolitan Police Department ("Chief of Police") with the serial numbers and storage places of firearms in the private operator's possession in the District of Columbia. If the Chief of Police determines that the information provided is satisfactory, he or she shall issue interim approval to the private operator for the weapons identified and held in the private operator's possession. The interim approval shall be valid for 90 days, during which time the private operator shall complete the actions necessary to register for permanent approval.

(2)(A) To register for permanent approval, the private operator shall provide the Chief of Police with the following information:

(i) The names and such other identifying information as the Chief of Police may require, of all private correctional officers who will be authorized by the private operator to carry and use firearms in the course of their assigned duties;

(ii) Records or other evidence acceptable to the Chief of Police to demonstrate that each private correctional officer authorized to carry and use firearms has received instructions about all applicable rules of the Department of Corrections or the Federal Bureau of Prisons regarding the use of force and deadly force in the course of his or her duties;

(iii) Records or other evidence acceptable to the Chief of Police to demonstrate that each private correctional officer authorized to carry and use firearms has successfully completed the training required by § 24-261.02(d); and

(iv) A sworn affidavit signed by each private correctional officer authorized to carry and use firearms attesting that he or she has read and understands all applicable rules of the Department of Corrections or the Federal Bureau of Prisons regarding the use of force and deadly force in the course of his or her duties.

(B) The Chief of Police, upon determining that the information submitted in accordance with this paragraph is satisfactory, shall issue permanent registration approval to the private operator for the firearms in the private operator's possession in the District of Columbia.

(b) A private operator who is issued firearms registration approval pursuant to this section shall be subject to the duties and revocation provisions set forth in §§ 7-2502.08 and 7-2502.09, and other applicable rules and laws of the District of Columbia. A private operator shall notify the Chief of Police whenever any private correctional officer authorized to carry and use firearms leaves the private operator's employment at a facility in the District or otherwise ceases to be authorized to carry and use firearms.

(c) Nothing in § 24-261.02 or this section shall be construed to allow any private correctional officer or any other person to remove any weapon regis-

tered to the private operator from the premises and grounds of the private operator's facility except in the performance of assigned duties and in accordance with laws and rules of the District and federal governments.

(June 3, 1997, D.C. Law 11-276, § 3a, as added May 28, 1999, D.C. Law 12-281, § 2(d), 45 DCR 7991.)

Prior Codifications. — 1981 Ed., § 24-495.2a.

Emergency legislation. — For temporary addition of section, see § 2(d) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emer-

gency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Legislative history of Law 12-281. — For legislative history of D.C. Law 12-281, see Historical and Statutory Notes following § 24-261.01.

§ 24-261.02b. Health professionals transferring from District government employment to employment by a private operator.

A health professional shall remain covered by § 3-1201.04 if the following criteria are met:

(1) The health professional is transferred from employment by the District government to employment by a private operator to perform essentially the same services as the person performed while employed by the District government and continues to perform such services for the duration of his or her employment by a private operator; and

(2) The health professional is covered by § 3-1201.04.

(June 3, 1997, D.C. Law 11-276, § 3b, as added May 28, 1999, D.C. Law 12-281, § 2(e), 45 DCR 7991.)

Prior Codifications. — 1981 Ed., § 24-495.2b.

Emergency legislation. — For temporary addition of section, see § 2(e) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emer-

gency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Legislative history of Law 12-281. — For legislative history of D.C. Law 12-281, see Historical and Statutory Notes following § 24-261.01.

§ 24-261.03. Inmates confined to CTF.

(a) An inmate confined in the CTF shall be deemed to be at all times in the legal custody of the Department of Corrections. Only the Department of Corrections shall have authority to transfer or assign inmates into or out of the CTF. All laws and regulations governing conduct of inmates, including, without limitation, Title 22 of the District of Columbia Official Code, shall apply to inmates confined to the CTF during such time as the CTF is operated by a private operator. All laws and regulations establishing penalties for offenses committed against correctional officers or other correctional employees, including, without limitation, the penalties provided for in § 22-405, shall apply mutatis mutandis to offenses committed against any private correctional officer or other employee of the private operator.

(b) An inmate confined in any privately-operated prison facility established pursuant to Subtitle C of the National Capital Revitalization and Self-

Government Improvement Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 712), shall be deemed to be at all times in the legal custody of the Federal Bureau of Prisons. Only the Federal Bureau of Prisons shall have authority to transfer or assign inmates into or out of the privately-operated prison facility. All laws and regulations governing conduct of inmates in Federal Bureau of Prisons facilities shall apply to inmates confined in any privately-operated prison facility during such time as the prison facility is operated by a private operator. All laws and regulations establishing penalties for offenses committed against correctional officers or other correctional employees shall apply wherever applicable to offenses committed against any private correctional officer or other employee of the private operator.

(June 3, 1997, D.C. Law 11-276, § 4, 44 DCR 1416; May 28, 1999, D.C. Law 12-281, § 2(f), 45 DCR 7991.)

Prior Codifications. — 1981 Ed., § 24-495.3.

Temporary Amendment of Section. — Section 2(c) of D.C. Law 12-164 added (b).

Section 4 of D.C. Law 12-164 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Correctional Treatment Facility Emergency Amendment Act of 1998 (D.C. Act 12-315, March 31, 1998, 45 DCR 2126), § 2(c) of the Correctional Treatment Facility Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-388, June 29, 1998, 45 DCR 4625), and § 2(f) of the Correctional Treatment Facility

Firearms Registration and Health Occupations Licensing Emergency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Legislative history of Law 11-276. — For legislative history of D.C. Law 11-276, see Historical and Statutory Notes following § 24-261.01.

Legislative history of Law 12-164. — For legislative history of D.C. Law 12-164, see Historical and Statutory Notes following § 24-261.01.

Legislative history of Law 12-281. — For legislative history of D.C. Law 12-281, see Historical and Statutory Notes following § 24-261.01.

CASE NOTES

In general.

Regulation requiring that prisoners have representation at disciplinary hearings, which was enacted in response to prisoner suit, did not apply to inmate in privately-operated correctional facility, as legislative history showed that regulations were only intended to cover inmates at correctional facility that was subject of lawsuit, and references in statute to Department of Corrections (DOC) personnel supported conclusion that regulations were only intended to apply to facilities operated by DOC. *Moore v. Gaither*, 767 A.2d 278, 2001 D.C. App. LEXIS 42 (2001).

Correctional Treatment Facility Act did not require privately-operated correctional facility to permit counsel to represent inmates at dis-

ciplinary hearings, as Act rendered all laws and regulations governing conduct of inmates applicable to prisoners at private facility but did not make regulations protecting inmates applicable. *Moore v. Gaither*, 767 A.2d 278, 2001 D.C. App. LEXIS 42 (2001).

Management agreement between Department of Corrections (DOC) and operators of private corrections facility did not create right to counsel for inmates in disciplinary hearings, as there was no clear or manifest intent to benefit inmates by contract, and contract specifically provided that it should not be construed as conferring any rights on any other person. *Moore v. Gaither*, 767 A.2d 278, 2001 D.C. App. LEXIS 42 (2001).

§ 24-261.04. Immunity from liability; indemnification insurance.

(a) The private operator shall protect, defend, indemnify, save, and hold harmless the District, its officers, agents, servants, employees, and volunteers

from and against any and all claims; demands, expenses, and liability arising out of or relating to acts or omissions of the private operator, its agents, servants, subcontractors, and employees in the performance of its contract with the District regardless of whether any damage resulting from the private operator's act, omission, or default is caused in part by the District, and any and all costs, expenses, and attorneys fees incurred by the District as a result of any such claim, demand, or cause of action including, but not limited to, any and all claims arising from:

(1) Any breach or default on the part of the private operator in the performance of its duties and obligations under its contract with the District;

(2) Any services rendered by the private operator or by any person or firm performing or supplying services, materials, or supplies in connection with the performance of the private operator's contract with the District;

(3) Any person or firm injured or damaged by the private operator, its officers, agents, servants, subcontractors, or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under its contract with the District in a manner not authorized by the contract, or by federal or District statutes or regulations; and

(4) Any failure of the private operator, its officers, agents, servants, subcontractors, or employees to observe federal or District laws, including, but not limited to, the Constitution of the United States.

(b) The private operator shall not waive, release, or otherwise forfeit any possible defense the District may have regarding claims arising from or made in connection with the operation of the CTF by the private operator without the consent of the District. The private operator shall preserve all available defenses and cooperate with the District to make such defenses available to the maximum extent allowed by law.

(c) The private operator shall provide an adequate policy of insurance to cover the indemnification provided for in this section, including coverage for civil rights claims. The adequacy of the insurance policy shall be determined by a risk management or actuarial firm with demonstrated experience in public liability for state and municipal governments. The insurance policy shall provide that the District is named as an additional insured and that the District shall be sent any notice of cancellation or material alteration.

(June 3, 1997, D.C. Law 11-276, § 5, 44 DCR 1416.)

Prior Codifications. — 1981 Ed., § 24-495.4. legislative history of D.C. Law 11-276, see Historical and Statutory Notes following § 24-261.01.

Legislative history of Law 11-276. — For

§ 24-261.05. Exemptions from leasing and property laws.

(a) Notwithstanding § 1-301.91, and § 10-801, the Mayor of the District of Columbia is authorized to sell and leaseback, in his discretion, for the best interests of the District of Columbia, the Correctional Treatment Facility, situated on Lot 800 of Square 1112, with a street address of 1901 E Street, S.E.

(b) Notwithstanding § 10-111, the Council of the District of Columbia approves the transfer from the United States government to the District of

Columbia of jurisdiction over that portion of Lot 800 of Square 1112 upon which is situated the District of Columbia Correctional Treatment Facility, as shown on a plat to be drawn and filed in the Office of the Surveyor of the District of Columbia.

(June 3, 1997, D.C. Law 11-276, § 6, 44 DCR 1416.)

Prior Codifications. — 1981 Ed., § 24-495.5. legislative history of D.C. Law 11-276, see Historical and Statutory Notes following § 24-

Legislative history of Law 11-276. — For 261.01.

Subchapter VII-A. Fair Phone Charges for Prisoners.

§ 24-263.01. Telephone charges in penal or correctional institutions.

(a) Notwithstanding any other District of Columbia law, no telephone service provider shall charge a customer a rate for operator-assisted calls made from a penal or correctional institution in the District of Columbia in excess of the maximum rate determined by the Public Service Commission of the District of Columbia.

(b) No penal or correctional institution in the District of Columbia shall charge a surcharge, commission, or other financial imposition that is in addition to legally established rates for local or long-distance telephone service.

(Apr. 27, 2001, D.C. Law 13-280, § 2, 48 DCR 1885.)

Legislative history of Law 13-280. — Law 13-280, the “Fair Phone Charges For Prisoners Act of 2000”, was introduced in Council and assigned Bill No. 13-632, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-577 and transmitted to both Houses of Congress for its review. D.C. Law 13-280 became effective on April 27, 2001.

§ 24-263.02. Prohibited charges in government contracts.

In any contract to which the District of Columbia is a party that is for the holding or incarceration of persons charged or convicted in the Superior Court of the District of Columbia, such contract shall prohibit surcharges, commissions, or other financial impositions that are in addition to the legally established rates for calls made by any inmate subject to the contract. The District of Columbia government shall seek to obtain quality service for the least cost to the individual party paying for the telephone call by an inmate subject to the contract.

(Apr. 27, 2001, D.C. Law 13-280, § 3, 48 DCR 1885.)

Legislative history of Law 13-280. — For Law 13-280, see notes following § 24-263.01.

§ 24-263.03. Department of Corrections report.

(a) The Department of Corrections ("Department") shall survey the communications plans used by the Federal Bureau of Prisons, and all state prison systems. The Department shall explore additional alternative communication plans with telecommunications companies. The explored alternatives shall include prison commissary phone accounts, restricted calling cards, presenting calling cards, and debit calling cards.

(b) No later than 180 days after April 27, 2001, the Department shall report to the Council and the Mayor the results of the survey and the exploration of alternatives. The report shall include the merits and disadvantages of each communication plan examined, including consideration of the security needs of the Department, the financial burden to the families and other individuals telephoned, the availability of telecommunications to the inmates, the feasibility of waiving the gross receipts tax, and other incentives to control the cost of inmate phone service. The report shall include a recommendation for an inmate telephone service.

(Apr. 27, 2001, D.C. Law 13-280, § 4, 48 DCR 1885.)

Legislative history of Law 13-280. — For Law 13-280, see notes following § 24-263.01.

§ 24-263.04. Operator-assisted calls.

The Public Service Commission shall determine the maximum rate for operator-assisted calls made from phones utilized by inmates of a penal or correctional institution in the District of Columbia.

(Apr. 27, 2001, D.C. Law 13-280, § 5, 48 DCR 1885.)

Legislative history of Law 13-280. — For Law 13-280, see notes following § 24-263.01.

Subchapter VIII. Correctional Industries Fund.

§§ 24-271 to 24-275. Establishment of Fund; availability of fund for rehabilitation of convicts; sale of products and services, deposit of receipts, use; annual report, disposition of funds; transfer of assets [Repealed].

Repealed.

(Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 1; May 8, 1996, D.C. Law 11-117, § 17(a), 43 DCR 1179.)

Prior Codifications. — 1981 Ed., §§ 24-451 to 24-455.

1973 Ed., §§ 24-451 to 24-455.

Legislative history of Law 11-117. — For

legislative history of D.C. Law 11-117, see Historical and Statutory Notes following § 24-231.01.

Subchapter IX. Inmate Welfare Fund.

§ 24-281. Definitions.

For the purposes of this subchapter, the term:

(1) “Commissary” means a system through which inmates in District correctional facilities are able to purchase permitted commodities.

(2) “Committee” means the Inmate Welfare Fund Committee established by section 3005 [§ 24-284].

(3) “Correctional facility” means any building, or group of buildings, and concomitant services, operated as a single management unit by, or under contract with, the Department of Corrections for the purpose of housing and providing services to persons ordered confined pending trial or upon conviction and sentencing for a violation of law.

(4) “Department” means the Department of Corrections.

(5) “Director” means the Director of the Department of Corrections.

(6) “Fund” means the Inmate Welfare Fund established by § 24-282.

(Mar. 2, 2007, D.C. Law 16-192, § 3002, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 3002 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 3002 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 3002 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — Law

16-192, the “Fiscal Year Budget Support Act of 2006”, was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Short title. — Short title: Section 3001 of D.C. Law 16-192 provided that subtitle A of title III of the act may be cited as the “Inmate Welfare Fund Establishment Act of 2006”.

§ 24-282. Establishment of Inmate Welfare Fund; audit; report.

(a) There is established a nonlapsing fund to be known as the Inmate Welfare Fund and to be used for the purposes set forth in § 24-283.

(b) The Fund shall consist of:

(1) An initial appropriation in fiscal year 2007; and

(2) Monies derived from the sale of goods through the commissary at correctional facilities.

(c) Except as provided in § 24-283(2), funds deposited into the Fund shall not be transferred or revert to the fund balance of the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall

be continually available for the uses and purposes set forth in § 24-283, subject to authorization by Congress.

(d) The Fund shall comply with all financial and procurement statutes, rules, regulations, standards, and systems promulgated by the District of Columbia government.

(e) The Fund shall be subject to annual audits scheduled by the Office of the Chief Financial Officer, which shall be submitted to the Council no later than February 1 of each year. The scope of the audit shall include an examination of the Department's use of Fund profits, including stocking the commissaries, low-bond releases, providing inmate clothing upon release, and funding transportation costs for inmates after release. The audit reports shall be submitted to the Council and the Mayor.

(Mar. 2, 2007, D.C. Law 16-192, § 3003, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 3003 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 3003 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 3003 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 24-281.

§ 24-283. Uses of Inmate Welfare Fund.

The Fund shall be used for the following purposes, in order of priority:

- (1) To stock the commissaries of District correctional facilities;
- (2) To repay the initial appropriation used to finance the Fund; and
- (3) To provide goods and services that benefit the general inmate population at District correctional facilities, as determined by the Inmate Welfare Fund Committee established in § 24-284.

(Mar. 2, 2007, D.C. Law 16-192, § 3004, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 3004 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 3004 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 3004 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 24-281.

§ 24-284. Inmate Welfare Fund Committee.

(a) The Inmate Welfare Fund Committee is established for the purpose of administering and supervising the operations of and the expenditures from the Inmate Welfare Fund.

(b) The Committee shall be composed of the following 5 members:

- (1) The Director of the Department of Corrections, or his or her designee;

(2) The General Counsel of the Department of Corrections, or his or her designee;

(3) The Warden of the Central Detention Facility, or his or her designee;

(4) The Manager of the Office of Internal Controls, Compliance, and Accreditation of the Department of Corrections, or his or her designee; and

(5) The Director of the Office of Management Information and Technological Services of the Department of Corrections, or his or her designee.

(c) The Committee shall maintain a record of its authorization and approval for all expenditures from the Fund.

(d) The Committee may promulgate regulations governing the use and expenditures of the Fund.

(Mar. 2, 2007, D.C. Law 16-192, § 3005, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 3005 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 3005 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 3005 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 24-281.

CHAPTER 3. PROBATION.

Sec.

24-301, 24-302 [Repealed].

24-303. Investigations and reports.

24-304. Discharge from or continuance of probation; modification or revocation of order.

Sec.

24-305. [Repealed].

24-306. Psychiatric services.

§ 24-301. Probation system; probation officers; appointment. [Repealed].

Repealed.

(Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 6(c)(2)(A).)

Prior Codifications. — 1981 Ed., § 24-101.

Effective date. — Pub. L. 105-274, § 10, Oct. 21, 1998, 112 Stat. 2429, provided:

“Effective Date. Except as otherwise specifi-

cally provided, this Act and the amendments made by this Act shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997.”

§ 24-302. When probation may be granted; statement to probationers; rules and regulations. [Repealed].

Repealed.

(Dec. 23, 1963, 77 Stat. 626, Pub. L. 88-241, § 21.)

Prior Codifications. — 1981 Ed., § 24-102.

§ 24-303. Investigations and reports.

The probation officers shall carefully investigate all cases referred to them by the court, and make recommendations to the court to enable it to decide whether the defendant ought to be placed under probation, and shall report to the court, from time to time as may be required by it, touching all cases in their care, to the end that the court may be at all times fully informed of the circumstances and conduct of probationers.

(June 25, 1910, 36 Stat. 864, ch. 433, § 3.)

Cross references. — Community service, see § 16-712.

Psychiatric services available to probation officers, see § 24-306.

Restitution or reparation, see § 16-711.

Split sentencing, see § 16-710.

Prior Codifications. — 1981 Ed., § 24-103. 1973 Ed., § 24-103.

§ 24-304. Discharge from or continuance of probation; modification or revocation of order.

(a) Upon the expiration of the term fixed for such probation, the probation officer shall report that fact to the court, with a statement of the conduct of the probationer while on probation, and the court may thereupon discharge the probationer from further supervision, or may extend the probation, as shall

seem advisable. At any time during the probationary term the court may modify the terms and conditions of the order of probation, or may terminate such probation, when in the opinion of the court the ends of justice shall require, and when the probation is so terminated the court shall enter an order discharging the probationer from serving the imposed penalty; or the court may revoke the order of probation and cause the rearrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed, or both, as the case may be, or any lesser sentence. If imposition of sentence was suspended, the court may impose any sentence which might have been imposed. If probation is revoked, the time of probation shall not be taken into account to diminish the time for which he was originally sentenced.

(b) If a person violates a condition of probation by using a controlled substance or by failing to comply with prescribed treatment for the use of a controlled substance, the court may order, in addition to or in lieu of the actions and sanctions authorized in subsection (a) of this section, the temporary placement of the person in custody, when in the opinion of the court such action is necessary for treatment or to assure compliance with conditions of probation.

(June 25, 1910, 36 Stat. 865, ch. 433, § 4; Mar. 10, 1983, D.C. Law 4-202, § 4, 30 DCR 173; Oct. 10, 1998, D.C. Law 12-165, § 4, 45 DCR 2980.)

Cross references. — Revocation of probation, authorization and eligibility for work release program, see § 24-241.01.

Section references. — This section is referred to in § 24-241.01.

Prior Codifications. — 1981 Ed., § 24-104. 1973 Ed., § 24-104.

Legislative history of Law 4-202. — Law 4-202, the "District of Columbia Sentencing Improvement Act of 1982," was introduced in Council and assigned Bill No. 4-120, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December

28, 1982, it was assigned Act No. 4-286 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-165. — Law 12-165, the "Truth in Sentencing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-523, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 23, 1998, it was assigned Act No. 12-343 and transmitted to both Houses of Congress for its review. D.C. Law 12-165 became effective on October 10, 1998.

CASE NOTES

ANALYSIS

Discharge from probation.
Hearing procedure.
Jurisdiction.
Necessity for hearing.
Review.
Revocation of probation.
Sentence imposition.

Discharge from probation.

Trial court's order purporting to remove Youth Corrections Act offender from probation by making entry in probation office file was void where order was entered without notice to

anyone, was not entered on court record, and was not followed by issuance of certificate of discharge and where such action was not within statutory alternatives. 18 U.S.C. §§ 5010(a), 5021(b); D.C. Code 1981, § 24-104. *Byrd v. United States*, 447 A.2d 454, 1982 D.C. App. LEXIS 377 (1982).

Hearing procedure.

Procedural requirements for probation revocation hearings include: (1) written notice of the alleged violations, (2) disclosure of the evidence against the probationer, (3) an opportunity for the probationer to be heard and present witnesses, (4) a neutral hearing body, and (5) a

written statement by the factfinder as to the evidence relied on and the reasons for revoking probation. *Williams v. United States*, 878 A.2d 477, 2005 D.C. App. LEXIS 334 (2005), writ of certiorari denied by 551 U.S. 1138, 127 S. Ct. 2988, 168 L. Ed. 2d 715, 2007 U.S. LEXIS 7835, 75 U.S.L.W. 3678 (2007).

Jurisdiction.

Factual inconsistency between police officer's testimony at trial on charge against probationer of possession of marijuana with intent to distribute (PMID), that marijuana was in a closed container within car, and officer's testimony at show-cause hearing that resulted in revocation of probation based on the same drug charge, that the marijuana he found had been in plain view in car, did not violate probationer's due process rights; whether the marijuana was found inside car's lidded center console or in the open area, did not factor into trial court's conclusion that probationer's probation should be revoked because he had possessed the marijuana, and there were several other facts that evidenced probationer's constructive possession of the marijuana found both in the console and the trunk. *Morgan v. United States*, 47 A.3d 532, 2012 D.C. App. LEXIS 141 (2012).

A trial court has no jurisdiction to revoke a person's probation unless it acts to initiate revocation proceedings before the probationary period expires. *Payne v. United States*, 792 A.2d 237, 2001 D.C. App. LEXIS 261 (2001).

Unlike Super. Ct. Crim. Rule 35(a), this section has no applicability to the issue of how long a court retains jurisdiction to vacate a particular probationary sentence imposed improperly under the controlling sentencing statute. For the determination of that jurisdictional issue, the court must look to Super. Ct. Crim. Rule 35(a). *United States v. A.B.*, 117 WLR 785 (Super. Ct. 1989).

Necessity for hearing.

A revocation hearing was to be held if defendant violated his conditions of probation by possessing illegal drugs; the community could not risk the possible reoccurrence of circumstances that led to murder by defendant, who was intoxicated at the time he murdered. *United States v. Johnson*, 123 WLR 2373 (Super. Ct. 1995).

Review.

District of Columbia prisoner failed to establish his custody, pursuant to second violator warrant, was in violation of Constitution, laws, or treaties of United States, and thus grant of § 2241 habeas relief was not warranted; prisoner had received prison sentence within lawful range, had received credit for time served prior to his release on probation, and, upon revocation of probation, had forfeited all time spent on probation. *Foster v. Wainwright*, 820

F.Supp.2d 36, 2011 U.S. Dist. LEXIS 123606 (2011).

Review of decision to revoke probation is limited to record supported determination that conditions of probation have been violated. D.C. Code 1981, § 24-104. *Smith v. United States*, 474 A.2d 1271, 1983 D.C. App. LEXIS 561 (1983).

With respect to consequences of revocation of probation, standard for review is same as for initial sentence. D.C. Code 1981, § 24-104. *Smith v. United States*, 474 A.2d 1271, 1983 D.C. App. LEXIS 561 (1983).

The Court of Appeals may not overturn a decision to revoke probation unless there has been an abuse of discretion. D.C. Code § 24-104. *Jones v. United States*, 401 A.2d 473, 1979 D.C. App. LEXIS 351 (1979).

Issues as to whether statute authorizing probation extension was unconstitutionally vague and whether two ex parte extensions of defendant's probation term violated his procedural due process rights because he was not given prior notice or an opportunity to be heard could not be considered on appeal where they were not raised below in motion to vacate sentence. D.C. Code § 24-104; U.S. Const. Amends. 5, 14. *Valentine v. United States*, 394 A.2d 1374, 1978 D.C. App. LEXIS 371 (1978).

A defendant, who has been convicted and placed on probation, being subject to surveillance and discipline and terms and conditions imposed on him, retains his right of appeal, whether probation follows actual imposition of sentence or suspension of imposition of sentence. D.C. Code 1951, § 24-101 et seq. *Blohm v. District of Columbia*, 113 A.2d 111, 1955 D.C. App. LEXIS 172 (Cr.App. 1955).

Revocation of probation.

Codefendant's custodial statements incriminating defendant were sufficiently reliable to support probation revocation based on new offense of murder, where codefendant stated that he saw that defendant had gone through victim's house through front door and that defendant told him that he had gone to victim's bedroom where she kept money, that victim woke up and followed him, that he obtained brick and beat victim with it, and that he left house with \$150, defendant had access to victim's house around time of murder, confessed to having been across street from house at time when murder could have occurred, and showed codefendant bundle of \$10 bills, and \$150 had been taken from victim. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

Preponderance-of-the-evidence standard governs probation revocation regardless of the basis on which revocation is sought, including the commission of a new criminal offense. *Young v.*

United States, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

Given the quasi-administrative nature of probation revocation, there is no reason why corroborative evidence, routinely considered relevant to the trustworthiness of hearsay in administrative proceedings, may not serve the same purpose at a revocation hearing. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

In federal probation revocation hearings, the general rule is that hearsay evidence may be admitted in the trial court's discretion if it bears sufficient indicia of reliability. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

While the Confrontation Clause dictates the manner in which witnesses give testimony in criminal trials, commanding not that evidence be reliable but that reliability be assessed by testing in the crucible of cross-examination, probation revocation is governed by the minimum requirements of due process, a process flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

Probation revocation is not a stage of a criminal prosecution, and so the full panoply of rights due a defendant in a criminal prosecution does not apply to such revocation proceedings; rather, probation revocation is more in the nature of an administrative hearing concerned with the probationer's rehabilitation. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

Due process gives a probationer at a revocation hearing a qualified right to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

For purposes of revocation of probation, probation is deemed to have begun on the date of sentencing, even if service of the probation has not begun. *Williams v. United States*, 832 A.2d 158, 2003 D.C. App. LEXIS 556 (2003).

The three-year term of defendant's supervised probation was tolled during the 30 days, over ten consecutive weekends, on which defendant was in jail pursuant to the unsuspended portion of his sentence; during those 30 days, defendant was not actually under supervision and instead was remanded to custody of Attorney General. *Payne v. United States*, 792 A.2d 237, 2001 D.C. App. LEXIS 261 (2001).

Rule announced in *United States Parole Comm'n v. Noble*, that Good Time Credits Act (GTCA) did not repeal pre-existing statutory street time forfeiture provision, applied retroactively to authorize recomputation by Depart-

ment of Corrections of sentences of inmates imprisoned following revocation of parole, in order to subtract their street time credit from total credits against their sentences; Court of Appeals reserved question of retroactivity in *Noble* because it was answering question of law certified to it from federal court, which court did apply the rule retroactively, and case before the Court was not so exceptional as to mandate prospective-only application. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Possibility of actual prejudice resulting from retroactive application of decision invalidating regulation that purported to preserve "street time" credit after revocation of parole to parolees whose parole might not have been revoked had Board of Parole known that they would not receive credit for street time did not bar retroactive application of decision at issue on due process grounds, as revocation decision based on a mistake of law by the Board would be vulnerable to challenge in court for abuse of discretion. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Retroactive application to revoked parolees of decision invalidating regulation that purported to preserve "street time" credit after revocation of parole did not violate due process, where decision was not unforeseeable and offenders were on actual notice of possibility that they might lose street time upon revocation of parole; decision at issue did not overrule prior case law, employed accepted principles of statutory interpretation, and followed federal construction of regulation at issue, and federal construction had applied to some local revoked parolees since regulation's adoption, at discretion of the Attorney General. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Retroactive application to revoked parolees of decision invalidating administrative regulation that purported to preserve "street time" credit after revocation of parole did not violate Constitutional prohibition against ex post facto laws, where administrative regulation at issue was invalid from its inception as directly contrary to pre-existing statutory street time forfeiture provision. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Only sanction which can be imposed for defendant's violation of condition of probation is revocation of probation and imposition of all or part of original sentence; violations may not be punished through finding of contempt. D.C. Code 1981, § 24-104. *Jones v. United States*, 560 A.2d 513, 1989 D.C. App. LEXIS 117 (1989).

Court which had lost jurisdiction to revoke defendant's probation once probationary period expired could not punish defendant for his failure to make restitution, in accordance with terms of probation, by holding defendant in

contempt. D.C. Code 1981, § 24-104. *Jones v. United States*, 560 A.2d 513, 1989 D.C. App. LEXIS 117 (1989).

In order to revoke probation of defendant consistent with due process, probationer must have acted, or failed to act, in a way that foreseeably could result in revocation. D.C. Code § 24-104; U.S. Const. Amend. 5. *Carradine v. United States*, 420 A.2d 1385, 1980 D.C. App. LEXIS 373 (1980).

Trial court deprived defendant of due process by revoking his probation solely on basis of his mental problems, in that maintenance or achievement of a particular level of mental stability was not an implied condition of his probation, and defendant could not have foreseen that his request for additional psychiatric assistance would be deemed the equivalent of a probation violation. D.C. Code § 24-104; U.S. Const. Amend. 5. *Carradine v. United States*, 420 A.2d 1385, 1980 D.C. App. LEXIS 373 (1980).

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. D.C. Code 1951, §§ 11-959, 24-101 to 24-105. *Stevens v. District of Columbia*, 127 A.2d 147, 1956 D.C. App. LEXIS 248 (Cr.App. 1956).

A probationer who had been arrested on another charge was properly arrested by probation officer for violation of terms of probation when she appeared in another court to answer the new charge, since only the execution of the sentence had been suspended and the requirement as to probable cause for the commission of an offense did not apply to her. D.C. Code 1940, § 24-104. *Cooper v. U.S.*, 48 A.2d 771, 1946 D.C. App. LEXIS 162 (Cr.App. 1946).

Conditioning probation on restitution, to be made by paying compensation award, and revoking probation for failure to pay the award, was not improper as imprisoning probationer for debt. *Longshoremen's and Harbor Workers' Compensation Act*, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 24-101 et seq.; § 36-501, 33 U.S.C. § 901 note. *Basile v. U.S.*, 38 A.2d 620, 1944 D.C. App. LEXIS 187 (Cr.App. 1944).

Sentence imposition.

Evidence did not support trial court's finding that defendant violated condition of his probation, based on defendant's conviction for criminal conduct that occurred before his probation

began; court knew charges were pending at time it imposed probation. *Washington v. United States*, 8 A.3d 1234, 2010 D.C. App. LEXIS 673 (2010).

Unexecuted "backup" portion of partially executed sentence could not be imposed, even if defendant violated conditions of his supervised release, where District of Columbia sentencing court had not imposed probation, and instead had proceeded under mistaken belief that United States Parole Commission, which would be supervising defendant, would be able to impose the unexecuted backup sentence. *Boykins v. United States*, 856 A.2d 606, 2004 D.C. App. LEXIS 427 (2004).

In determining whether a fine is a condition of probation or a separate penalty, the oral pronouncement of the judge at the time of sentencing controls. *Bell v. United States*, 806 A.2d 228, 2002 D.C. App. LEXIS 512 (2002).

Upon revoking Youth Rehabilitation Act sentence, court was authorized to impose adult sentence. D.C. Code 1981, § 24-104. *Smith v. United States*, 597 A.2d 377, 1991 D.C. App. LEXIS 263 (1991).

Trial court, after suspending execution of probationer's sentence of 20 to 60 months in prison, and placing him on probation for five years, had discretion, after revoking probation, to impose a sentence under the Narcotics Addiction Rehabilitation Act, where new sentence was within statutory limit governing offense of receiving stolen property, offense for which probationer was convicted. 18 U.S.C. § 4253; D.C. Code 1973, §§ 22-2207, 24-104. *Mulky v. United States*, 451 A.2d 855, 1982 D.C. App. LEXIS 449 (1982).

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. D.C. Code 1951, §§ 11-959, 24-101 to 24-105. *Stevens v. District of Columbia*, 127 A.2d 147, 1956 D.C. App. LEXIS 248 (Cr.App. 1956).

Upon revocation of probation, a sentence of confinement imposed under § 24-801 et seq. may exceed in length an adult sentence of incarceration originally imposed and suspended. *United States v. Wheeler*, 115 WLR 2025 (Super. Ct. 1987).

§ 24-305. Office and supplies for probation officers; expenses. [Repealed].

Repealed.

(June 25, 1910, 36 Stat. 865, ch. 433, § 5; Mar. 4, 1919, 40 Stat. 1325, ch. 122; 1973 Ed., § 24-105; Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 6(c)(2)(B).)

Prior Codifications. — 1981 Ed., § 24-105. 1973 Ed., § 24-105.

Effective date. — Pub. L. 105-274, § 10, Oct. 21, 1998, 112 Stat. 2429, provided:

“Effective Date. Except as otherwise specifi-

cally provided, this Act and the amendments made by this Act shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997.”

§ 24-306. Psychiatric services.

The Mayor shall appoint a qualified psychiatrist and a qualified psychologist whose services shall be available to the following officers to assist them in carrying out their duties:

(1) In criminal cases, the judges and probation officers of the United States District Court for the District of Columbia and the judges and Director of Social Services of the Superior Court of the District of Columbia;

(2) The judges and such personnel assigned to the Family Division of the Superior Court as the Chief Judge may designate;

(3) Such officers of the Department of Corrections as the Director thereof shall designate; and

(4) The Board of Parole of the District.

(June 29, 1953, 67 Stat. 105, ch. 159, § 405; Aug. 16, 1954, 68 Stat. 730, ch. 737, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 159(d); June 3, 1997, D.C. Law 11-275, § 15, 44 DCR 1408.)

Cross references. — Board of Parole, creation, powers and duties, see §§ 24-401.01 to 24-401.03.

Confinement in mental hospital while in penal institution, see § 24-502.

Department of Corrections, see §§ 24-211.011 to 24-211.06.

Investigations and reports by probation officers, see § 24-303.

Physical and mental examinations and treatment of child, see § 16-2315.

Prior Codifications. — 1981 Ed., § 24-106. 1973 Ed., § 24-106.

Legislative history of Law 11-275. — Law 11-275, the “Second Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No.

11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Assistance to corrections officers.

Assistance to courts.

Assistance to corrections officers.

Under statute providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner can be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in 1964 Civil Commitment Act and same procedures for release from hospital as are embodied in the Act. D.C. Code §§ 21-501 et seq., 21-543, 21-545 to 21-547, 24-106, 24-302, 24-303. *Matthews v. Hardy*, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

Assistance to courts.

Although generally an appellate court will not review sentences that are within the statutory maximum, a sentencing judge should use some of the resources which the congress has provided in regard to psychiatric evaluation of a prisoner, and should not arbitrarily ignore the data properly obtained thereby in fixing a sentence. Fed. Rules Crim. Proc. rule 35, 18 U.S.C.; 18 U.S.C. § 4208(b, c); D.C. Code 1961, §§ 24-106, 24-301 and (a); 18 U.S.C. § 2255. *Leach v. United States*, 334 F.2d 945, 1964 U.S. App. LEXIS 5772 (C.A.D.C. 1964).

On adequate averment, defendant has right to assistance of court in developing basis for his insanity of defense, and such assistance may take form of commitment for mental examination, examination through Mental Health Com-

mission or Legal Psychiatric Service, or appointment of private experts. 18 U.S.C. § 4244; Fed. Rules Crim. Proc. rules 17(b), 28, 18 U.S.C.; D.C. Code 1961, §§ 21-308, 24-106, 24-301(a). *Brown v. United States*, 331 F.2d 822, 1964 U.S. App. LEXIS 5757 (C.A.D.C. 1964).

Where at time of sentence upon robbery conviction defendant stated to court that he was "under a psychiatrist for one year" in 1935, that he "had a mental disorder from 1952," that he was "under a doctor in the state prison at Trenton" in 1952, and that all but 63 days of the past 31 years, since he was 19 years old, he had spent in various prisons, and court imposed the maximum penalty without responding to defendant's request for a mental examination prior to sentence, case would be remanded to district court for reconsideration of the sentence. D.C. Code 1961, §§ 22-2901, 24-101, 24-106, 24-301; Fed. Rules Crim. Proc. rule 32(c), 18 U.S.C. *Leach v. United States*, 320 F.2d 670, 1963 U.S. App. LEXIS 5479 (C.A.D.C. 1963), affirmed by 353 F.2d 451, 122 U.S. App. D.C. 280, 1965 U.S. App. LEXIS 4082 (1965).

In sentencing, the judge must consider a program of rehabilitation designed to preclude, so far as current learning can furnish a guide, a repetition of the crime, and to such end Congress has placed several aids at disposal of judge, including provisions for presentence investigation, for commitment prior to sentence to a hospital for examination to determine mental competence of the offender, and for appointment of psychiatrist and psychologist. D.C. Code 1961, §§ 24-101, 24-106, 24-301; Fed. Rules Crim. Proc. rule 32(c), 18 U.S.C.; 18 U.S.C. § 4208(b); 18 U.S.C. § 334. *Leach v. United States*, 320 F.2d 670, 1963 U.S. App. LEXIS 5479 (C.A.D.C. 1963), affirmed by 353 F.2d 451, 122 U.S. App. D.C. 280, 1965 U.S. App. LEXIS 4082 (1965).

CHAPTER 4. INDETERMINATE SENTENCES AND PAROLES.

Subchapter I. General Provisions

- Sec.
 24-401 to 24-401b. [Repealed].
 24-401c. Application for reduction of sentence.
 24-401.01 to 24-401.03. [Abolished].
 24-402. [Repealed].
 24-403. Indeterminate sentences; life sentences; minimum sentences.
 24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.
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24-409. Federal Parole Board.

Subchapter II. Interstate Parole and Probation Compact

- 24-451. Authority of Mayor to execute Interstate Parole and Probation Compact.
 24-452. Definitions.
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Subchapter III. Medical and Geriatric Parole

- 24-461. Definitions.
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 24-464. Medical parole.
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Subchapter I. General Provisions.

§ 24-401. Board of Indeterminate Sentence and Parole. [Repealed].

Repealed.

(July 17, 1947, 61 Stat. 379, ch. 263, § 7.)

Prior Codifications. — 1981 Ed., § 24-201.

§ 24-401a. Board of Parole — Created; members; procedural rules; transfer of powers, employees, supplies and appropriations of Board of Indeterminate Sentence and Parole; duties of Parole Executive; cooperation of Department of Corrections. [Repealed].

Repealed.

(Apr. 28, 1988, D.C. Law 7-103, § 5(a), 34 DCR 8279.)

Prior Codifications. — 1981 Ed., §§ 24-201a, 24-201b.

Legislative history of Law 7-103. — For

legislative history of D.C. Law 7-103, see Historical and Statutory Notes following § 24-401.01.

§ 24-401b. Board of Parole — Created; members; procedural rules; transfer of powers, employees, supplies and appropriations of Board of Indeterminate Sentence and Parole; duties of Parole Executive; cooperation of Department of Corrections. [Repealed].

Repealed.

(Apr. 28, 1988, D.C. Law 7-103, § 5(a), 34 DCR 8279.)

Prior Codifications. — 1981 Ed., §§ 24-201a, 24-201b.

legislative history of D.C. Law 7-103, see Historical and Statutory Notes following § 24-401.01.

Legislative history of Law 7-103. — For

§ 24-401c. Application for reduction of sentence.

When by reason of his training and response to the rehabilitation program of the Department of Corrections it appears to the Board that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, and that his immediate release is not incompatible with the welfare of society, but he has not served his minimum sentence, the Board in its discretion may apply to the court imposing sentence for a reduction of his minimum sentence. The court shall have jurisdiction to act upon the application at any time prior to the expiration of the minimum sentence and no hearing shall be required. If a prisoner is serving a sentence for a crime for which a minimum sentence is prescribed by § 24-403(b) his minimum sentence shall not be reduced under this section below the minimum sentence so prescribed.

(July 17, 1947, 61 Stat. 379, ch. 263, § 4; June 29, 1953, 67 Stat. 92, ch. 159, § 201(b).)

Prior Codifications. — 1981 Ed., § 24-201c.

1973 Ed., § 24-201c.

§ 24-401.01. Board of Parole — Creation; term of members. [Abolished].

Abolished.

(Apr. 28, 1988, D.C. Law 7-103, § 2, 34 DCR 8279; Aug. 5, 1997, 111 Stat. 745, Pub. L. 105-33, § 11231(b).)

Prior Codifications. — 1981 Ed., § 24-201.1.

Legislative history of Law 7-103. — Law 7-103, the “District of Columbia Board of Parole Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-133, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on Nov. 10, 1987 and Nov. 24, 1987, respectively. Deemed approved without the signature of the Mayor on December 14, 1987, it was assigned Act No. 7-122 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Communication from court.
Immunity from liability.

Communication from court.

Trial court's ex parte communication to Parole Board concerning apparent inconsistency between Parole Board's recommendation and recommendation of the Classification Committee with respect to possible Youth Rehabilitation Act sentencing of defendant was harmless. ABA Code of Jud. Conduct, Canon 3, subd. A(4); D.C. Code 1981, § 24-803. *Foster v. United States*, 615 A.2d 213, 1992 D.C. App. LEXIS 262 (1992).

Immunity from liability.

Doctor who evaluated parolee's future dan-

gerousness at parole board's request, for purpose of enabling parole board to determine whether parole should be revoked, shared in parole board's judicial immunity from liability in tort when doctor erroneously advised parole board that parolee presented no danger to community, just a few weeks before he shot women with firearm; it was immaterial whether doctor was employee of parole board or independent contractor. *Cunningham v. District of Columbia*, 584 A.2d 573, 1990 D.C. App. LEXIS 326 (1990).

§ 24-401.02. Powers and duties of Board; transfer of employees, official records, etc. from Board of Parole. [Abolished].

Abolished.

(Apr. 28, 1988, D.C. Law 7-103, § 3, 34 DCR 8279; Aug. 5, 1997, 111 Stat. 745, Pub. L. 105-33, § 11231(b).)

Prior Codifications. — 1981 Ed., § 24-201.2.

Legislative history of Law 7-103. — For

legislative history of D.C. Law 7-103, see Historical and Statutory Notes following § 24-401.01.

CASE NOTES

ANALYSIS

Board decisions.
Construction and application.
Due process.
Parole determinations.

Board decisions.

Statutory language does not explicitly require that Parole Board vote to terminate parole or conditional release or to modify terms or conditions of parole or conditional release occur at Board meeting. D.C. Code 1981, § 24-201.2. *Bennett v. Ridley*, 633 A.2d 824, 1993 D.C. App. LEXIS 290 (1993).

Construction and application.

The statutes regarding powers of federal board of parole and District of Columbia Board of Indeterminate Sentence and Parole indicates congressional intent to provide a uniform administration of federal and district laws with respect to the control of released prisoners. 18 U.S.C. §§ 710, 715-716b; D.C. Code 1940,

§§ 24-201, 24-208. *Gould v. Green*, 141 F.2d 533, 1944 U.S. App. LEXIS 3734 (1944).

Due process.

For purposes of due process analysis, an offender's expectation and reliance interests in sentence mistake cases are ordinarily trumped by the strong public interest in crime prevention and punishing criminals. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Parole statute and related regulations do not confer upon inmate a liberty interest in parole set-off decisions, entitling inmate to due process protections. U.S. Const. Amend. 14; D.C. Code 1981, § 24-204(a); D.C. Mun. Regs. title 28, §§ 104.1, 104.2, 104.11. *Hall v. Henderson*, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Although due process clause shields from arbitrary or capricious deprivation those facets of convicted criminal's existence that qualify as liberty interests, those interests are created, if at all, by state law unless they inhere in due process clause. U.S. Const. Amend. 14. *Hall v.*

Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Right to particular set-off date for parole hearing is not inherent in due process clause. U.S. Const.Amend. 14. Hall v. Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Parole board's scheduling of set-off date cannot be "atypical and significant hardship" on inmate creating liberty interest protected by due process, unless board's discretion under policy guidelines is subject to such substantive limitation on official discretion that failure to honor limitation would be characterized as deprivation of liberty. U.S. Const.Amend. 14. Hall v. Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Even though parole board's policy guidelines required board to have some basis for deviating from prescribed set-offs, board was not restricted to considering only enumerated factors, and therefore, guidelines vested substantial discretion in board to deviate; consequently, guidelines lacked substantial limitations on official discretion required for regulation to give rise to liberty interest protected under due process. U.S.C. Const.Amend. 14. Hall v. Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Possibility of parole from shorter set-off provides no more than mere hope that benefit will be obtained, a hope which is not protected by due process. U.S. Const.Amend. 14. Hall v. Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Parole board's deviation from prescribed set-off dates was not "atypical and significant hardship" on inmate creating liberty interest protected by due process, since board's policy guidelines did not put substantive limitations on board's discretion. U.S. Const.Amend. 14. Hall v. Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Parole determinations.

District of Columbia Board of Indeterminate Sentence and Parole had power to impose conditions upon release of prisoner who had served full time of sentence with deductions for good conduct and in event of violation of conditions to recommit him to serve out balance of his term. 18 U.S.C. §§ 4161, 4164, 4201, 4203, 4204; D.C. Code 1940, §§ 24-201, 24-208. Gould v. Green, 141 F.2d 533, 1944 U.S. App. LEXIS 3734 (1944).

District of Columbia Parole Board was final decisionmaker for District on matters of parole, and therefore, District could be liable for single decision of Board in parolee's § 1983 action seeking damages for revocation of his parole that violated Fifth Amendment due process; under District code, Board had broad and exclusive authority in decisions regarding parole, Board was not constrained by policies made by

a higher body, and Board's decisions were not subject to review by other officials. Singletary v. District of Columbia, 800 F.Supp.2d 58, 2011 U.S. Dist. LEXIS 116015 (2011).

District of Columbia Parole Board was final policymaker for District on matters of parole revocation, and therefore, District could be held liable in parolee's § 1983 action seeking damages for revocation of his parole that violated Fifth Amendment due process; under District code, Board had broad and exclusive authority in decisions regarding parole, and mayor delegated authority to chairman of Board to promulgate rules regarding parole. Singletary v. District of Columbia, 800 F.Supp.2d 58, 2011 U.S. Dist. LEXIS 116015 (2011).

The power of United States Board of Parole to impose conditions on release on account of deductions for good conduct of United States prisoners passed from United States Board of Parole to district board of penal institutions by statute with respect to United States prisoners in penal institutions of the District of Columbia. 18 U.S.C. §§ 4161, 4164, 4201; D.C. Code 1940, §§ 24-201 to 24-208, 24-209. Ex parte Gould, 51 F.Supp. 354, 1943 U.S. Dist. LEXIS 2379 (D.D.C.1943).

The action of the Board of Parole chair in recommending a set-off date for inmate was protected from suit by inmate under the doctrine of judicial immunity; the chair's recommendation was part of her official duty to decide whether to revoke, grant, or deny inmate parole. Hammond v. Quick, 829 A.2d 509, 2003 D.C. App. LEXIS 484 (2003).

Parole board's policy guidelines governing set-off dates are not formal "regulations," as would require compliance with agency's own promulgated regulations. Hall v. Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Parole board did not base its decision to impose five-year set-off on erroneous information, where finding that petitioner displayed unusual cruelty to victim in instant offense referred to shooting and wounding of two individuals in presence of victim's children, not to mistake in hearing official's report that petitioner had assaulted mail carrier at gunpoint. D.C.Mun.Reg. title 28, § 104.11. Hall v. Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Parole board satisfied minimal requirement of policy guidelines by listing aggravating factors of negative institutional behavior and cruelty to victim in support of deviating from prescribed parole set-off. D.C.Mun.Reg. title 28, § 104.11. Hall v. Henderson, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

"Double counting" occurs when parole commission, in setting parole hearing or rehearing date, relies upon aggravating factor to generate presumptive parole date for prisoner under

Federal Parole Guidelines, and then applies same factor in determining whether to extend date beyond presumptive date set out under Guidelines. *Hall v. Henderson*, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Abuse of discretion arises from double counting in parole context, since inmate is inordinately prejudiced whenever single unfavorable factor is given twice its weight for same determination. *Hall v. Henderson*, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Parole board did not double count violent nature of petitioner's armed offenses, where risk of violence factor used to adjust parole eligibility score was not identical to unusual cruelty to victim factor used to arrive at sepa-

rate determination of five-year set-off. D.C. Mun. Regs. title 28, § 204.18. *Hall v. Henderson*, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

Escape from halfway house, followed shortly after apprehension by possession of contraband, could reasonably be viewed as "extremely serious negative institutional behavior," within meaning of Board of Parole guideline entitling Board to schedule parole reconsideration date longer than prescribed set-off time that offender was required to remain incarcerated before being reconsidered for parole. D.C. Code 1981, § 24-201(2) (repealed); D.C. Mun. Regs. tit. 28, § 104. *White v. Hyman*, 647 A.2d 1175, 1994 D.C. App. LEXIS 174 (1994).

§ 24-401.03. Rulemaking. [Abolished].

Abolished.

(Apr. 28, 1988, D.C. Law 7-103, § 4, 34 DCR 8279; Aug. 5, 1997, 111 Stat. 745, Pub. L. 105-33, § 11231(b).)

Prior Codifications. — 1981 Ed., § 24-201.3.

Legislative history of Law 7-103. — For

legislative history of D.C. Law 7-103, see Historical and Statutory Notes following § 24-401.01.

§ 24-402. Employees of Board of Indeterminate Sentence and Parole. [Repealed].

Repealed.

(July 17, 1947, 61 Stat. 379, ch. 263, § 7.)

Prior Codifications. — 1981 Ed., § 24-202.

§ 24-403. Indeterminate sentences; life sentences; minimum sentences.

(a) Except as provided in subsections (b) and (c) of this section, in imposing sentence on a person convicted in the District of Columbia of a felony, the justice or judge of the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a minimum period not exceeding one-third of the maximum sentence imposed, and any person so convicted and sentenced may be released on parole as herein provided at any time after having served the minimum sentence. Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed 15 years imprisonment.

(b) The minimum sentence imposed under this section on a person convicted of an assault with intent to commit rape in violation of § 22-401, or of armed robbery in violation of § 22-4502 shall be not less than 2 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in § 22-4501, providing for the

control of dangerous weapons in the District of Columbia. The minimum sentence imposed under this section on a person convicted of rape in violation of § 22-4801 [repealed], shall not be less than 7 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined. The maximum sentence in each case to which this subsection applies shall not be less than 3 times the minimum sentence imposed, and shall not be more than the maximum fixed by law.

(c) For a person convicted of: (1) a violation of § 22-405 (relating to assault with a dangerous weapon on a police officer) occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction; (2) a violation of § 22-4503, providing for the control of dangerous weapons in the District (relating to illegal possession of a pistol [now "firearm"]), occurring after the person has been convicted of violating that section; or (3) a violation of § 22-2501 (relating to possession of implements of crime) occurring after the person has been convicted in the District of Columbia of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction, the minimum sentence imposed under this section shall not be less than 1 year, and the maximum sentence shall not be less than 3 times the minimum sentence imposed nor more than the maximum fixed by law.

(July 15, 1932, 47 Stat. 697, ch. 492, § 3; June 6, 1940, 54 Stat. 242, ch. 254, § 2; June 29, 1953, 67 Stat. 91, ch. 159, § 201(a); Feb. 26, 1981, D.C. Law 3-113, § 4, 27 DCR 5624.)

Cross references. — Armed offenses, added punishment for committing crime when armed, see § 22-4502.

Assault with intent to kill, rob, rape, or poison, see § 22-401.

Burglary, see § 22-801.

Crime of violence defined, see § 22-4501.

Robbery, see § 22-2801.

Sexual abuse generally, see § 22-3001 et seq.

Section references. — This section is referred to in §§ 24-401c and 24

Prior Codifications. — 1981 Ed., § 24-203. 1973 Ed., § 24-203.

Legislative history of Law 3-113. — Law 3-113, the "District of Columbia Death Penalty Repeal Act of 1980," was introduced in Council and assigned Bill No. 3-395, which was referred

to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 12, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 17, 1980, it was assigned Act No 3-307 and transmitted to both Houses of Congress for its review.

References in text. — Subsection (b) of this section was added by the Act of June 29, 1953 and originally contained the phrase "armed robbery in violation of section 810 of such Act (D.C. Code 22-3202)." Section 810 of the Act of March 3, 1901 is found in the Code as § 22-2801 and concerns the crime of robbery. Section 22-3202 § 22-4502, 2001 Ed. concerns the commission of a crime while armed.

CASE NOTES

ANALYSIS

Accessories to offenses.
Construction with federal law.
Criminal contempt.
Homicide.
Maximum sentences.
Merger of offenses.
Minimum sentences.

Weapons offenses.

Accessories to offenses.

Accessory statute enacted by Congress for District of Columbia modified common law by lowering punishment of accessory to one half of maximum authorized penalty of principal, but did not break link between accessory and principal and common-law notion of derivative cul-

pability. D.C. Code 1981, § 22-106. *Heard v. United States*, 686 A.2d 1026, 1996 D.C. App. LEXIS 274 (1996).

Construction with federal law.

United States Parole Commission (USPC) had authority to release District of Columbia defendant to parole supervision until expiration of his maximum sentence; under law in effect at time of defendant's sentence, judge was required to impose sentence not exceeding maximum period fixed by law and for minimum period not exceeding one-third of maximum sentence imposed, convicted person could have been released on parole under such law at any time after having served the minimum sentence, and USPC had assumed parole responsibility of District of Columbia prisoners while defendant had been serving his sentence. *Carter-El v. Fulwood*, 819 F.Supp.2d 38, 2011 U.S. Dist. LEXIS 120581 (2011).

The interaction of former 18 U.S.C. § 4205(a), and this section should give full effect to the sentence aggregation approach indicated by 18 U.S.C. § 4205(a), while at the same time obligating prisoners to serve at least the minimum term or terms imposed under the D.C. Code. Thus the FBP should follow a uniform, full aggregation approach in calculating parole eligibility for persons incarcerated in federal penitentiaries. Whether consecutive sentences are imposed solely under the U.S. Code, or under the federal code and the D.C. Code, all should be added together to arrive at a single aggregate sentence. But because the D.C. Code "otherwise provides," the 10-year cap indicated in 18 U.S.C. § 4205(a) would not be dispositive when a D.C. Code sentence is implicated. Rather, the prisoner would remain ineligible for parole until he completed service of time equivalent to the minimum D.C. Code sentence or sentences. *United States v. Johnson*, 114 WLR 2089 (Super. Ct. 1986).

Criminal contempt.

Indeterminate Sentence Act does not apply to a criminal contempt conviction. D.C. Code 1981, § 24-203(a). In *re Neal*, 475 A.2d 390, 1984 D.C. App. LEXIS 377 (1984).

Homicide.

Sentences imposed by trial court for defendant's convictions of murder in the first degree were not erroneous by trial court's failure to explicitly set forth minimum term of incarceration since sentences for first-degree murder were outside District of Columbia Code requirement that, where maximum sentence imposed is life imprisonment, minimum sentence shall be imposed which shall not exceed 15 years' imprisonment, but were controlled by special statute providing that, notwithstanding any other provision of law, person convicted of first-degree murder and upon whom life imprison-

ment sentence is imposed shall be eligible for parole after expiration of 20 years. D.C. Code 1973, §§ 22-2404, 24-203. *United States v. Bryant*, 663 F.2d 293, 1981 U.S. App. LEXIS 18333 (C.A.D.C. 1981).

Defendant's two life sentences for murder in the first degree were not illegal on basis that defendant never received a minimum sentence as required by law since statute establishing that defendant would be eligible for parole after first-degree murder conviction after expiration of 20 years, notwithstanding any provision of law, was a special statute which controlled statute providing that, where maximum sentence imposed is life imprisonment, minimum sentence shall be imposed which shall not exceed 15 years. D.C. Code 1973, §§ 22-2404, 24-203. *United States v. Bryant*, 663 F.2d 293, 1981 U.S. App. LEXIS 18333 (C.A.D.C. 1981).

Sentences of six and two-thirds to 20 years' imprisonment for each of defendant's two convictions as accessory after the fact to assault with intent to kill while armed were permissible; maximum penalty for underlying crime was life imprisonment, and defendant's maximum potential sentence on each count of 20 years' imprisonment was less than 45-year term which has been imposed in other cases in which life imprisonment was possible, and thus was necessarily less than half of maximum sentence to which principal may be sentenced. D.C. Code 1981, §§ 22-106, 22-501, 22-3202. *Heard v. United States*, 686 A.2d 1026, 1996 D.C. App. LEXIS 274 (1996).

Maximum minimum sentence of 15 years' imprisonment applicable to all life sentences applies when lesser sentence is imposed upon conviction for crime for which life sentence could be imposed and defendant who was sentenced to a maximum of 60 years in prison for second-degree murder could not be sentenced to a minimum of 20 years. D.C. Code 1981, § 24-203(a). *Haney v. United States*, 473 A.2d 393, 1984 D.C. App. LEXIS 354 (1984).

Maximum sentences.

Where defendant was sentenced in 1936 to 30-year term for second-degree murder and was given conditional release when his accumulated good time and industrial good time allowances and his time already served totalled 30 years, defendant was thereafter under the supervision of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. 18 U.S.C. §§ 4161-4164, 4202; D.C. Code 1940, §§ 24-203, 24-204; Act June 6, 1940, § 9(b), 54 Stat. 244. *Johnson v. Ward*, 171 F.Supp. 26, 1959 U.S. Dist. LEXIS 3530 (D.D.C.1959).

An "indeterminate sentence" differs from a "determinate sentence" only in that the former imposes a minimum term; the good time and

industrial time of provisions, however, are geared to the maximum term and the minimum term does not affect the computation. D.C. Code 1940 §§ 24-203, 24-204; Act June 6, 1940, § 9(b), 54 Stat. 244; 18 U.S.C. § 4202. *Johnson v. Ward*, 171 F.Supp. 26, 1959 U.S. Dist. LEXIS 3530 (D.D.C.1959).

Argument that Indeterminate Sentences Act established 45-year maximum term as basis for mandated application of good time credits to maximum sentence of life imprisonment would not be addressed for first time on inmate's appeal from denial of habeas corpus petition seeking good time credits as question was one for administrative agency to consider in first instance. D.C. Code 1981, § 24-203. *Murray v. Stempson*, 633 A.2d 48, 1993 D.C. App. LEXIS 275 (1993).

Merger of offenses.

Prospect of having conviction "automatically" set aside under Youth Corrections Act was a difference so important as to outweigh possibility of longer confinement and to warrant conclusion that second sentence, of thirty-four months to one hundred and two months, under Indeterminate Sentence Law, was more severe than first sentence, of three to nine years, under Youth Corrections Act, for robbery; and, accordingly, second sentence, entered on motion to correct, was invalid where offender had already begun to serve first sentence. D.C. Code 1961, § 24-203; 18 U.S.C. § 5010(c). *Tatum v. U.S.*, 310 F.2d 854, 1962 U.S. App. LEXIS 3773 (C.A.D.C. 1962).

Statutory ten-year ceiling on term to be served on federal sentences before being eligible for parole did not apply to prisoner incarcerated in federal prison for consecutive federal and District Columbia sentences, and thus the Federal Bureau of Prisons correctly aggregated District of Columbia minimum sentence and minimum sentence for one of the two federal convictions for a total of 18 years and four months before prisoner would be eligible for parole. 18 U.S.C. § 4205(a, h); D.C. Code 1981, §§ 24-203 to 24-209. *Chatman-Bey v. Smith*, 594 F. Supp. 718, 1984 U.S. Dist. LEXIS 22909 (1984), dismissed by 597 F. Supp. 509, 1984 U.S. Dist. LEXIS 21440 (D.D.C. 1984).

The rule of lenity did not require the imposition of concurrent sentences for defendant's convictions for simple assault and attempted second-degree child cruelty; offenses were distinct and did not merge for sentencing purpose, and statute provided for consecutive sentences for two or more offense that arose out of a single criminal act. *Bradley v. United States*, 856 A.2d 1157, 2004 D.C. App. LEXIS 434 (2004), writ of certiorari denied by 545 U.S. 1121, 125 S. Ct. 2923, 162 L. Ed. 2d 307, 2005 U.S. LEXIS 4785, 73 U.S.L.W. 3719 (2005).

Rule of lenity was not applicable to merge defendant's sentence enhancement for gun-related offenses with other sentence enhancement, even though defendant was sentenced to a maximum term of more than his natural life on each count; charges relating to the gun-related offenses were separate offenses, not the same offense. *Sanders v. United States*, 809 A.2d 584, 2002 D.C. App. LEXIS 604 (2002), writ of certiorari denied by 538 U.S. 937, 123 S. Ct. 1602, 155 L. Ed. 2d 340, 2003 U.S. LEXIS 2425, 71 U.S.L.W. 3610 (2003), remanded by 975 A.2d 165, 2009 D.C. App. LEXIS 241 (D.C. 2009).

Under "rule of lenity," when it is unclear whether legislature intended to impose multiple punishments, multiple convictions under same statute that are based on same act will merge. *Heard v. United States*, 686 A.2d 1026, 1996 D.C. App. LEXIS 274 (1996).

Because theoretical underpinning of common-law notion of accessory after the fact is derivative liability, accessory's liability must have basis in liability of principal, and therefore, when convictions of principal merge, convictions of accessory must also merge, but when convictions of principal do not merge, neither will convictions of accessory merge. D.C. Code 1981, § 22-106. *Heard v. United States*, 686 A.2d 1026, 1996 D.C. App. LEXIS 274 (1996).

Defendant's convictions for two counts of being accessory after the fact to assault with intent to kill while armed and one count of being accessory after the fact to possession of firearm during crime of violence, which arose from incident in which two passengers in automobile driven by defendant opened fire on occupants of another vehicle, did not merge, because underlying offenses did not merge; underlying assault charges did not merge because two distinct victims were injured, and firearm charge did not merge with assault charges. D.C. Code 1981, § 22-106. *Heard v. United States*, 686 A.2d 1026, 1996 D.C. App. LEXIS 274 (1996).

Rule of lenity is reserved for situations where language and structure, legislative history, and motivating policies behind statute do not remove any reasonable doubt as to scope of statute with respect to multiple punishments. *Heard v. United States*, 686 A.2d 1026, 1996 D.C. App. LEXIS 274 (1996).

Minimum sentences.

Sentence of three to nine years, under Federal Youth Corrections Act, for robbery, although erroneous in that part which undertook to fix three year minimum, was lawful sentence. D.C. Code 1961, § 24-203; 18 U.S.C. § 5010(c). *Tatum v. U.S.*, 310 F.2d 854, 1962 U.S. App. LEXIS 3773 (C.A.D.C. 1962).

Felony threat defendant's sentence was illegal in that it failed to state mandatory mini-

term. D.C. Code 1981, § 24-203(a). *Joiner v. United States*, 585 A.2d 176, 1991 D.C. App. LEXIS 19 (1991).

Defendant convicted of armed robbery was not improperly denied certain procedural rights guaranteed by statute before sentence may be enhanced on ground that trial court enhanced minimum term of his sentence due to prior robbery conviction, in that trial court did not state that minimum sentence was predicated upon defendant's prior robbery conviction, information citing to robbery committed in Maryland was on its face a nullity because enhancement statute expressly provides that prior crime must have been committed in District of Columbia, and minimum sentence was exactly one third of maximum sentence. D.C. Code 1981, §§ 22-3202(a)(2), 23-111(b), 24-203(a). *Brown v. United States*, 474 A.2d 161, 1984 D.C. App. LEXIS 371 (1984).

Where notice of appeal was filed after trial court sentenced defendant but before trial court entered order setting minimum sentences, trial court was without jurisdiction to modify the sentence so as to provide for the minimum sentencing required by statute; remand was required for entry of minimum sentences. D.C. Code § 24-203. *Smith v. United States*, 357 A.2d 418, 1976 D.C. App. LEXIS 544 (1976).

Weapons offenses.

Trial court should have prescribed both a minimum and maximum term in sentencing defendant on conviction of unlawfully possessing an unregistered sawed-off shotgun. D.C. Code § 24-203. *United States v. Wilkerson*, 598 F.2d 621, 1978 U.S. App. LEXIS 9960 (C.A.D.C. 1978).

§ 24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.

(a) For any felony committed on or after August 5, 2000, the court shall impose a sentence that:

(1) Reflects the seriousness of the offense and the criminal history of the offender;

(2) Provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and

(3) Provides the offender with needed educational or vocational training, medical care, and other correctional treatment.

(b)(1) If an offender is sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section, the court shall impose a period of supervision ("supervised release") to follow release from the imprisonment or commitment.

(2) If the court imposes a sentence of more than one year, the court shall impose a term of supervised release of:

(A) Five years, if the maximum term of imprisonment authorized for the offense is 25 years or more; or

(B) Three years, if the maximum term of imprisonment authorized for the offense is more than one year, but less than 25 years.

(3) If the court imposes a sentence of one year or less, the court shall impose a term of supervised release of:

(A) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is 25 years or more; or

(B) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is more than one year, but less than 25 years.

(4) In the case of a person sentenced for an offense for which registration is required by the Chapter 40 of Title 22, the court may, in its discretion, impose a longer term of supervised release than that required or authorized by paragraph (2) or (3) of this subsection, of:

(A) Not more than 10 years; or

(B) Not more than life if the person is required to register for life.

(5) The term of supervised release commences on the day the offender is released from imprisonment, and runs concurrently with any federal, state, or local term of probation, parole, or supervised release for another offense to which the offender is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the offender is imprisoned in connection with a conviction for a federal, state, or local crime unless the period of imprisonment is less than 30 days.

(6) Offenders on supervised release shall be subject to the authority of the United States Parole Commission until completion of the term of supervised release. The Parole Commission shall have and exercise the same authority as is vested in the United States District Courts by 18 U.S.C. § 3583(d)-(i), except that:

(A) The procedures followed by the Parole Commission in exercising such authority shall be those set forth in chapter 311 [repealed] of title 18 of the United States Code; and

(B) An extension of a term of supervised release under 18 U.S.C. § 3583(e)(2) may be ordered only by the court upon motion from the Parole Commission.

(7) An offender whose term of supervised release is revoked may be imprisoned for a period of:

(A) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is life or the offense is specifically designated as a Class A felony;

(B) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is 25 years or more, but less than life and the offense is not specifically designated as a Class A felony;

(C) Not more than 2 years, if the maximum term of imprisonment authorized for the offense is 5 years or more, but less than 25 years; or

(D) Not more than 1 year, if the maximum term of imprisonment authorized for the offense is less than 5 years.

(b-1) If the maximum term of imprisonment authorized for an offense is a term of years, the term of imprisonment or commitment imposed by the court shall not exceed the maximum term of imprisonment authorized for the offense less the maximum term of imprisonment authorized upon revocation of supervised release pursuant to subsection (b)(7) of this section. If the maximum term of imprisonment authorized for the offense is up to life or if an offense is specifically designated as a Class A felony, the maximum term of imprisonment authorized upon revocation of supervised release pursuant to subsection (b)(7) shall not be deducted from the maximum term of imprisonment or commitment authorized for such offense.

(b-2)(1) The court may impose a sentence in excess of 60 years for first degree murder or first degree murder while armed, 40 years for second degree murder or second degree murder while armed, or 30 years for armed carjacking, first degree sexual abuse, first degree sexual abuse while armed, first degree child sexual abuse or first degree child sexual abuse while armed, only if:

(A) Thirty-days prior to trial or the entry of a plea of guilty, the prosecutor files an indictment or information with the clerk of the court and a copy of such indictment or information is served on the person or counsel for the person, stating in writing one or more aggravating circumstances to be relied upon; and

(B) One or more aggravating circumstances exist beyond a reasonable doubt.

(2) Aggravating circumstances for first degree murder are set forth in § 22-2104.01. Aggravating circumstances for first degree sexual abuse and first degree child sexual abuse are set forth in § 22-3020. In addition, for all offenses, aggravating circumstances include:

(A) The offense was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression (as defined in § 2-1401.02(12A);

(B) The offense was committed because the victim was or had been a witness in any criminal investigation or judicial proceeding or was capable of providing or had provided assistance in any criminal investigation or judicial proceeding;

(C) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(D) The offense was especially heinous, atrocious, or cruel;

(E) The offense involved a drive-by or random shooting;

(F) The offense was committed after substantial planning;

(G) The victim was less than 12 years old or more than 60 years old or vulnerable because of mental or physical infirmity; or

(H) Except where death or serious bodily injury is an element of the offense, the victim sustained serious bodily injury as a result of the offense.

(3) This section does not limit the imposition of a maximum sentence of up to life imprisonment without possibility of release authorized by § 22-1804a; § 22-2104.01; § 22-2106; and § 22-3020.

(c) A sentence under this section of imprisonment, or of commitment pursuant to § 24-903, shall be for a definite term, which shall not exceed the maximum term allowed by law or be less than any minimum term required by law. A person sentenced under this section to imprisonment, or to commitment pursuant to § 24-903, for such a felony shall serve the term of imprisonment or commitment specified in the sentence, less any time credited toward service of the sentence under subsection (d) of this section.

(d) A person sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section may receive good time credit toward service of the sentence only as provided in 18 U.S.C. § 3624(b).

(d-1)(1) A person sentenced to imprisonment under this section for a nonviolent offense may receive up to a one-year reduction in the term the person must otherwise serve if the person successfully completes a substance abuse treatment program in accordance with 18 U.S.C. § 3621(e)(2).

(2) For the purposes of this subsection, the term "nonviolent offense" means any crime other than those included within the definition of "crime of violence" in § 23-1331(4).

(e) The sentence imposed under this section on a person convicted of assault with intent to commit first or second degree sexual abuse or child sexual abuse in violation of § 22-401, or of armed robbery in violation of § 22-4502, shall be not less than 2 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in § 22-4501, providing for the control of dangerous weapons in the District of Columbia. The sentence imposed under this section on a person convicted of first or second degree sexual abuse or child sexual abuse in violation of § 22-3002, § 22-3003, or § 22-3008 through § 22-3010, shall not be less than 7 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined.

(f) The sentence imposed under this section shall not be less than 1 year for a person convicted of:

(1) Assault with a dangerous weapon on a police officer in violation of § 22-405, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction;

(2) Illegal possession of a pistol [now “firearm”] in violation of § 22-4503, occurring after the person has been convicted of violating that section; or

(3) Possession of the implements of a crime in violation of § 22-2501, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction.

(July 15, 1932, 47 Stat. 697, ch. 492, § 3a, as added Oct. 10, 1998, D.C. Law 12-165, § 2, 45 DCR 2980; June 8, 2001, D.C. Law 13-302, § 8(a), 47 DCR 7249; June 19, 2001, D.C. Law 13-313, § 21(c) 48 DCR 1873; May 24, 2005, D.C. Law 15-357, § 302, 52 DCR 1999; June 25, 2008, D.C. Law 17-177, § 14, 55 DCR 3696.)

Prior Codifications. — 1981 Ed., § 24-203.1.

Effect of amendments. — D.C. Law 13-302, in subsec. (a), substituted “For” for “Notwithstanding any other provision of law, for”; rewrote subsec. (b) which had read:

“(b) If an offender is sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section, the court shall impose an adequate period of supervision to follow release from the imprisonment or commitment.”; added subsecs. (b-1) and (b-2); and, in subsec. (c), in the first sentence, substituted “A” for “In the case of a felony described in § 24-112(h)”, and, in the second sentence, deleted “for such a felony” preceding “shall serve the term”. D.C. Law 13-313, in subsec. (b-2)(1), substituted “first degree child sexual abuse or first degree child sexual abuse while armed” for “first degree child sexual abuse or first degree sexual abuse while armed”.

D.C. Law 15-357 added subsec. (d-1).

D.C. Law 17-177, in subsec. (b-2)(2)(A), substituted “national origin, sexual orientation, or gender identity or expression (as defined in

§ 2-1401.02(12A))” for “national origin or sexual orientation”.

Emergency legislation. — For temporary (90-day) amendment of section, see § 8(a) of the Sentencing Reform Emergency Amendment Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271). For temporary (90-day) addition of § 24-203.2 1981 Ed., see § 8(b) of the same Act.

For temporary (90 day) amendment of section, see § 8(a) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 8(a) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 8(a) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

Legislative history of Law 12-165. — Law

12-165, the "Truth in Sentencing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-523, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 23, 1998, it was assigned Act No. 12-343 and transmitted to both Houses of Congress for its review. D.C. Law 12-165 became effective on October 10, 1998.

Legislative history of Law 13-302. — Law 13-302, the "Sentencing Reform Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-696, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-406 and transmitted to both Houses of Congress for its review. D.C. Law 13-302 became effective on June 8, 2001.

Legislative history of Law 13-313. — Law 13-313, the "Technical Amendment Act of 2000," was introduced in Council and assigned

Bill No. 13-879, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.

Legislative history of Law 15-357. — Law 15-357, the "Omnibus Public Safety Ex-offender Self-sufficiency Reform Amendment Act of 2004," was introduced in Council and assigned Bill No. 15-785, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on November 9, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-744 and transmitted to both Houses of Congress for its review. D.C. Law 15-357 became effective on May 24, 2005.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 24-112.

CASE NOTES

ANALYSIS

Concurrent terms.

In general.

Concurrent terms.

Sentencing judges, in imposing prison sentences on defendant in two matters, i.e., 24 months for assault with a dangerous weapon (ADW) and 60 months for possession of a firearm during a crime of violence (PFCV) in first matter, to run concurrently, and 276 months in second matter on convictions for kidnapping, first-degree sexual abuse, and robbery, to run consecutively to sentence in first matter, did not abuse their discretion in declining to send defendant, who was eligible for special education services, to a treatment facility rather than an adult prison, as judges appropriately balanced factors set forth in statute providing that a court "shall" impose a sentence reflecting seriousness of offense, providing for just punishment, and providing educational or vocational training, and determined that defendant posed too great a danger to the community to sentence him to a treatment facility. *Johnson v. United States*, 26 A.3d 758, 2011 D.C. App. LEXIS 515 (2011).

If an offender violates the conditions of probation, following split sentence under Truth in Sentencing Act imposing probation and suspending supervised release, the term of supervised release would take immediate effect upon "release from imprisonment"; at that time, defendant would no longer be under court supervision, but subject solely to supervision by the

U.S. Parole Commission, which could under its rules, revoke supervised release and impose a further term of imprisonment pursuant to statute. *Richardson v. United States*, 927 A.2d 1137, 2007 D.C. App. LEXIS 401 (2007).

Truth in Sentencing Act does not permit concurrent terms of probation and supervised release; when imposing such a split sentence, trial court must suspend the term of supervised release in its entirety. *Richardson v. United States*, 927 A.2d 1137, 2007 D.C. App. LEXIS 401 (2007).

In general.

Petitioner failed to allege facts sufficient to support assertion that Moorish-Americans were disadvantaged by United States Parole Commission's (USPC) enforcement of District of Columbia's supervised release statute, as required to state equal protection claim against USPC. *Smallwood v. United States Parole Comm'n*, 777 F.Supp.2d 148, 2011 U.S. Dist. LEXIS 41044 (2011).

United States Parole Commission (USPC) did not violate separation of powers doctrine by issuing, pursuant to District of Columbia's supervised release statute, warrants for parolee's arrest or by finding probable cause to believe parolee committed offense as charged, since USPC exercised no judicial function and had no authority to impose prison sentence upon conviction of crime. *Smallwood v. United States Parole Comm'n*, 777 F.Supp.2d 148, 2011 U.S. Dist. LEXIS 41044 (2011).

Under District of Columbia law, discretionary conditions of supervised release are im-

posed not by the trial court, but by an independent administrative agency, the United States Parole Commission, which has statutory discretion to impose any condition it considers to be appropriate. *Denson v. United States*, 918 A.2d 1193, 2006 D.C. App. LEXIS 748 (2006).

Unexecuted "backup" portion of partially executed sentence could not be imposed, even if defendant violated conditions of his supervised

release, where District of Columbia sentencing court had not imposed probation, and instead had proceeded under mistaken belief that United States Parole Commission, which would be supervising defendant, would be able to impose the unexecuted backup sentence. *Boykins v. United States*, 856 A.2d 606, 2004 D.C. App. LEXIS 427 (2004).

§ 24-403.02. Sentencing and good time credit for misdemeanors committed on or after August 5, 2000.

A sentence of incarceration, or of commitment pursuant to § 24-903, for a misdemeanor committed on or after August 5, 2000, shall be for a definite term, which shall not exceed the maximum term allowed by law. A person sentenced to incarceration, or to commitment pursuant to § 24-903, under this section, shall serve the term of incarceration or commitment specified in the sentence, less any time credited toward service of the sentence as provided in § 24-221.01 through § 24-221.05.

(July 15, 1932, 47 Stat. 697, ch. 492, § 3b, as added June 8, 2001, D.C. Law 13-302, § 8(b), 47 DCR 7249.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 8(b) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) addition of section, see § 8(b) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) addition of section, see § 8(b) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

Legislative history of Law 13-302. — For Law 13-302, see notes following § 24-403.01.

§ 24-404. Authorization of parole; custody; discharge.

(a) Whenever it shall appear to the United States Parole Commission ("Commission") that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his or her release is not incompatible with the welfare of society, and that he or she has served the minimum sentence imposed or the prescribed portion of his or her sentence, as the case may be, the Commission may authorize his or her release on parole upon such terms and conditions as the Commission shall from time to time prescribe. While on parole, a parolee shall remain in the legal custody and under the control of the Attorney General of the United States or his or her authorized representative until:

(1) The expiration of the maximum of the term or terms specified in his or her sentence without regard to good time allowance; or

(2) The Commission terminates legal custody over such parolee under subsection (a-1) of this section.

(a-1)(1) Upon its own motion or upon request of a parolee, the Commission may terminate legal custody over the parolee before expiration of the parolee's sentence.

(2) Two years after a parolee's release on parole, and at least annually thereafter, the Commission shall review that parolee's status to determine the need for continued legal custody and may terminate legal custody over the parolee if, in its discretion, the Commission determines that continued legal custody is no longer needed.

(3) Five years after a parolee's release on parole, the Commission shall terminate legal custody over the parolee unless the Commission determines, after a hearing, that legal custody of the parolee should not be terminated because there is a likelihood that the parolee will violate any criminal law.

(4) If the Commission does not terminate legal custody under paragraph (3) of this subsection, the Commission:

(A) May conduct a hearing annually, if the parolee so requests, to determine whether to terminate legal custody of the parolee; and

(B) Shall conduct a hearing every 2 years to determine whether to terminate legal custody of the parolee.

(5) In calculating a time period under this subsection, the Commission shall exclude:

(A) Any period of release on parole before the most recent such release; and

(B) Any period served in confinement on any other sentence.

(a-2)(1) The provisions of subsection (a-1) of this section shall apply to a person who is on parole on or after May 20, 2009.

(2) For a person released on parole prior to May 20, 2009, determinations by the Commission whether to terminate legal custody under subsection (a-1)(2) or (3) of this section, as applicable, shall be made within one year after May 20, 2009.

(b) Notwithstanding the provisions of subsections (a), (a-1), and (a-2) of this section, the Council of the District of Columbia may promulgate rules and regulations under which the Commission, in its discretion, may discharge a parolee from supervision prior to the expiration of the maximum term or terms for which he was sentenced.

(July 15, 1932, 47 Stat. 697, ch. 492, § 4; June 6, 1940, 54 Stat. 242, ch. 254, § 3; July 17, 1947, 61 Stat. 378, ch. 263, § 3; May 22, 1965, 79 Stat. 113, Pub. L. 89-24, § 1; May 20, 2009, D.C. Law 17-389, § 3(a), 56 DCR 1196.)

Cross references. — Notice to chief of police of prisoner release, see § 5-113.05.

Section references. — This section is referred to in § 24-407.

Prior Codifications. — 1981 Ed., § 24-204. 1973 Ed., § 24-204.

Effect of amendments. — D.C. Law 17-389 rewrote subsec. (a); added subsecs. (a-1) and (a-2); and, in subsec. (b), substituted "subsections (a), (a-1), and (a-2)" for "subsection (a)" and substituted "Commission" for "Board of Parole". Prior to amendment, subsec. (a) read as follows: "(a) Whenever it shall appear to the Board of Parole that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his

release is not incompatible with the welfare of society, and that he has served the minimum sentence imposed or the prescribed portion of his sentence, as the case may be, the Board may authorize his release on parole upon such terms and conditions as the Board shall from time to time prescribe. While on parole, a prisoner shall remain in the legal custody and under the control of the Attorney General of the United States or his authorized representative until the expiration of the maximum of the term or terms specified in his sentence without regard to good time allowance."

Legislative history of Law 17-389. — For Law 17-389, see notes following § 24-221.03.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(210) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Construction and application.
Credit for time served on parole.
Denial of parole.
Discretion of board.
Review.
Revocation of parole.
Rules and regulations.
Supervision of parolees.
Termination of parole.

Construction and application.

District of Columbia parole statute does not create liberty interest in parole sufficient to trigger due process protections. U.S.C. Const.Amend. 5; D.C. Code 1981, § 24-204. *Pryor-El v. Kelly*, 892 F. Supp. 261, 1995 U.S. Dist. LEXIS 8994 (1995), affirmed by 1996 U.S. App. LEXIS 18512 (D.C. Cir. June 21, 1996).

The District of Columbia statute concerning paroles is not applicable to prisoner who is given a conditional release. 18 U.S.C. §§ 4163, 4164; D.C. Code 1940, § 24-204. *Johnson v. Ward*, 171 F.Supp. 26, 1959 U.S. Dist. LEXIS 3530 (D.D.C.1959).

Expectation of early release from prison, or from service of a sentence, that is induced not by a valid statute or regulation but by the mistaken representations of officials does not without more give rise to a liberty interest entitled to protection under the Due Process Clause. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Opinion of corporation counsel regarding whether parole statute impliedly repealed statute banning credit for time served on parole if parole was revoked was not entitled to deference; implied repeal was issue for court, as final arbitrator within judicial system, notwithstanding corporation counsel's role as legal advisor to District of Columbia government and potentially persuasive power of office's opinions. D.C. Code 1981, §§ 24-206(a), 24-431(a). *United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Court was not required to defer to administrative interpretation of parole statute in deter-

mining pure question of law as to whether statute impliedly repealed earlier enactment banning credit for time spent on parole if parole was revoked; moreover, even if deference ordinarily due government agency for interpretation of statute it administered applied, statutory language and relevant history did not permit deference where reconciliation of statutes was reasonably possible. D.C. Code 1981, §§ 24-206(a), 24-431(a). *United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Parole statute and related regulations do not confer upon inmate a liberty interest in parole set-off decisions, entitling inmate to due process protections. U.S. Const.Amend. 14; D.C. Code 1981, § 24-204(a); D.C.Mun.Reg. title 28, §§ 104.1, 104.2, 104.11. *Hall v. Henderson*, 672 A.2d 1047, 1996 D.C. App. LEXIS 36 (1996).

The interaction of former 18 U.S.C. § 4205(a), and this section should give full effect to the sentence aggregation approach indicated by 18 U.S.C. § 4205(a), while at the same time obligating prisoners to serve at least the minimum term or terms imposed under the D.C. Code. Thus the Federal Board of Parole should follow a uniform, full aggregation approach in calculating parole eligibility for persons incarcerated in federal penitentiaries. Whether consecutive sentences are imposed solely under the U.S. Code, or under the federal code and the D.C. Code, all should be added together to arrive at a single aggregate sentence. But because the D.C. Code "otherwise provides," the 10-year cap indicated in 18 U.S.C. § 4205(a) would not be dispositive when a D.C. Code sentence is implicated. Rather, the prisoner would remain ineligible for parole until he completed service of time equivalent to the minimum D.C. Code sentence or sentences. *United States v. Johnson*, 114 WLR 2089 (Super. Ct. 1986).

Credit for time served on parole.

Because District of Columbia prisoner was serving a mandatory minimum term of five

years, good time credit could not have advanced his parole eligibility date, and an award of good time credit would have had no effect on the length of time prisoner was subject to supervision by the United States Parole Commission (USPC). *Coachman v. United States Parole Comm'n*, 816 F.Supp.2d 20, 2011 U.S. Dist. LEXIS 114592 (2011).

Rule of lenity did not apply to permit credit for time served on parole after parole was revoked where there was no ambiguity between statutes and it was clear that statute providing for credit for time served on parole did not impliedly repeal statute of more specific application prohibiting credit for parole time if parole was later revoked. D.C. Code 1981, §§ 24-206(a), 24-431(a). *United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Denial of parole.

Inmate's constitutional challenge alleging miscalculation of parole eligibility date did not need to be brought first as habeas corpus petition, but could be brought as § 1983 action without exhausting habeas remedy; because District of Columbia parole decisions were entirely discretionary, there was no guarantee that inmate would have been released any earlier. U.S. Const.Amend. 5, 14; 42 U.S.C. § 1983; D.C. Code 1981, § 24-204(a). *Anyanwutaku v. Moore*, 151 F.3d 1053, 1998 U.S. App. LEXIS 16920 (C.A.D.C. 1998).

Habeas corpus petition challenging the procedures for denying parole was not "civil action" within meaning of provision of Prison Litigation Reform Act (PLRA) requiring prisoner to pay filing fee for civil actions in installments. 18 U.S.C. §§ 1915(b)(1-3), 2254, 2255. *Anyanwutaku v. Moore*, 151 F.3d 1053, 1998 U.S. App. LEXIS 16920 (C.A.D.C. 1998).

District of Columbia parole regulations stating that reconsideration shall ordinarily occur within twelve months and listing factors for setoff decisions created no due process liberty interest in parole. U.S.C. Const.Amend. 5, 14. *Anyanwutaku v. Moore*, 151 F.3d 1053, 1998 U.S. App. LEXIS 16920 (C.A.D.C. 1998).

Any reliance on juvenile record to deny parole was not so irrational or arbitrary as to violate the due process clause. U.S.C. Const.Amend. 5, 14. *Anyanwutaku v. Moore*, 151 F.3d 1053, 1998 U.S. App. LEXIS 16920 (C.A.D.C. 1998).

Prisoner's conclusory assertions that racial discrimination was basis of parole board's denial of parole as against board's affidavits in denying discrimination did not create a genuine issue as to a material fact when viewed in light of board's broad discretionary power. D.C. Code 1961, § 24-204; Fed.Rules Civ.Proc. rules 3, 12(b), 56(e), 18 U.S.C.; 42 U.S.C. § 1983.

Richardson v. Rivers, 335 F.2d 996, 1964 U.S. App. LEXIS 4781 (C.A.D.C. 1964).

District of Columbia prisoners, who alleged that fraudulent disciplinary reports written against them in retaliation for exercise of their First Amendment rights could hinder their chance to be granted parole at upcoming hearings, did not allege a liberty interest that had been denied and therefore failed to state a claim for violation of their Fifth Amendment rights. U.S. Const.Amend. 5; D.C. Code 1981, § 24-204(a). *Garcia v. District of Columbia*, 56 F.Supp.2d 1, 1999 U.S. Dist. LEXIS 9461 (1998).

Statutes, regulations, policies, and practices of District of Columbia Board of Parole did not create liberty interest in reparole such that refusal of Board to reparole inmate could be determined to violate inmate's due process. D.C. Code 1981, § 24-204(a); U.S.C. Const.Amend. 5. *Brandon v. District of Columbia Bd. of Parole*, 631 F. Supp. 435, 1986 U.S. Dist. LEXIS 27467 (1986), affirmed by 823 F.2d 644, 262 U.S. App. D.C. 236, 1987 U.S. App. LEXIS 9783 (1987).

Insanity acquittee could not be conditionally released from hospital before being granted parole from concurrent criminal conviction. D.C. Code 1981, §§ 24-204(a), 24-301, 24-425. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

Parole Board's determination that there was no reasonable probability that defendant would live and remain at liberty without violating law or that release would be compatible with welfare of society was supported by report of psychiatrist who examined defendant that defendant was unlikely to make satisfactory, independent adjustment to community and that, given defendant's history and personality, there was nothing that might improve defendant's chances to achieve a satisfactory adjustment. D.C. Code 1981, § 24-204(a). *McRae v. Hyman*, 667 A.2d 1356, 1995 D.C. App. LEXIS 236 (1995).

Board of Parole guideline, requiring written explanations as to set-off periods chosen for prisoner to remain incarcerated before being able to seek reconsideration of parole, did not give rise to protected liberty interest, and thus any noncompliance by Board, in failing to specify reasons for setting prisoner's reconsideration hearing beyond one-year period normally applicable, did not entitle prisoner to release from custody, even assuming that guideline applied retroactively to prisoner's case. D.C. Code 1981, § 24-204(a) (repealed); D.C. Mun.Reg. tit. 28, § 104.2; U.S.C. Const.Amend. 5. *White v. Hyman*, 647 A.2d 1175, 1994 D.C. App. LEXIS 174 (1994).

Prisoner was adequately apprised of grounds of Board of Parole decision, which set prisoner's reconsideration hearing beyond one-year pe-

riod for reconsideration normally applicable, where order stated that Board was denying parole and setting reconsideration on specified date because prisoner committed crime while in halfway house setting, escaped from custody while housed at that facility, and committed "major" disciplinary violation while in minimum security, and, based on this conduct, hearing officer had described prisoner's institutional behavior as "deplorable" and as indication of his "contempt for criminal justice process." D.C. Code 1981, § 24-204(a) (repealed); D.C. Mun.Reg. tit. 28, § 104.2. *White v. Hyman*, 647 A.2d 1175, 1994 D.C. App. LEXIS 174 (1994).

Discretion of board.

Assuming that due process required that the District of Columbia Board of Parole (BOP) exercise discretion before revoking parole for failure to report, there was no due process violation on that ground; record showed that the Board did not revoke parolee's parole solely and mechanically upon its finding he violated a condition of parole that he report to parole office, but that it considered both the seriousness of the violation and the mitigating factors he advanced. *Duckett v. Quick*, 282 F.3d 844, 2002 U.S. App. LEXIS 4192 (C.A.D.C. 2002), writ of certiorari denied by 537 U.S. 863, 123 S. Ct. 247, 154 L. Ed. 2d 104, 2002 U.S. LEXIS 5801, 71 U.S.L.W. 3238 (2002).

Due process liberty interest in parole is created by state's use of explicitly mandatory language in connection with establishment of specified, substantive predicates to limit discretion; test stated in *Sandin v. Conner*, — U.S. —, 115 S.Ct. 2293, 132 L.Ed.2d 418—due process liberty interest will generally be limited to freedom from restraint which imposes atypical and significant hardship on inmate in relation to ordinary incidents of prison life—does not apply since *Sandin* it does not deal with prisoner's liberty interest in parole and does not overrule *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668, and *Board of Pardons v. Allen*, 482 U.S. 369, 107 S.Ct. 2415, 96 L.Ed.2d 303, which are directly on point. U.S. Const.Amend. 5, 14. *Ellis v. District of Columbia*, 84 F.3d 1413, 1996 U.S. App. LEXIS 12308 (C.A.D.C. 1996).

District of Columbia regulations do not give to prisoners due process liberty interest in parole; first section of chapter on parole recognizes Board of Parole's authority to release prisoner on parole in its discretion, calculations done under regulations are intended to enable Board to exercise discretion when release is compatible with safety of community, regulations characterize score as aid to assess degree of risk posed by parolee, and regulations authorize Board to disregard numerical guidelines. U.S. Const.Amend. 5, 14; D.C.Mun.Reg. title

28, §§ 200.1, 204.1, 204.2, 204.3. *Ellis v. District of Columbia*, 84 F.3d 1413, 1996 U.S. App. LEXIS 12308 (C.A.D.C. 1996).

District of Columbia Code does not create liberty interest in parole that is protected by due process clause of Fourteenth Amendment; Code provides no substantive limitations on board's discretionary authority to grant parole and thus creates no expectancy of release. U.S.C. Const.Amend. 14; D.C. Code 1981, § 24-204(a). *Price v. Barry*, 53 F.3d 369, 1995 U.S. App. LEXIS 10222 (C.A.D.C. 1995).

The parole board is vested with broad discretion in the dispositional process. 18 U.S.C. § 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

The parole board's selection of a particular disposition, after full and fair consideration of available facts, may be regarded as almost unreviewable, but failure to afford a procedure whereby violator may seek a favorable disposition, or an outright refusal to consider proffered evidence in mitigation, is not immune from judicial overview. 18 U.S.C. § 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

It is well within Parole Board's discretion to discount numerical system indicators and determine, for written reasons given, that parole should not be granted. D.C. Code 1981, § 24-204(a), D.C. Mun. Regs. title 28, §§ 200.1, 204.22. *McRae v. Hyman*, 667 A.2d 1356, 1995 D.C. App. LEXIS 236 (1995).

District of Columbia's numerical system for parole determination lacks mandatory character that is essential to claim that regime of parole gives rise to liberty interest as District's parole system is grounded in exercise of discretion by Parole Board to grant or deny parole; Board is not required to either grant or deny parole based on score attained, and Board may ignore results of scoring in deciding individual case conditioned on the Board's setting forth in writing those factors it relied on in departing from result indicated by scoring system. D.C. Code 1981, § 24-204(a); D.C. Mun. Regs. title 28, §§ 200.1, 204.1 et seq. *McRae v. Hyman*, 667 A.2d 1356, 1995 D.C. App. LEXIS 236 (1995).

District of Columbia's parole scheme confers discretion to grant or deny parole in the Parole Board, and regulatory numerical scoring system used by District does not create a liberty interest overriding the District's exercise of its discretion. D.C. Code 1981, § 24-204(a); D.C. Mun. Regs., title 28, §§ 200.1, 204.1 et seq. *McRae v. Hyman*, 667 A.2d 1356, 1995 D.C. App. LEXIS 236 (1995).

Applying salient factor scoring system, which was adopted after inmate was sentenced, to determine parole eligibility did not violate ex

post facto clause of the United States Constitution; salient factor scores merely formalized the method by which the board could exercise its discretion to grant parole. U.S.C. Const. Art. 1, § 9, cl. 3; 9 DCRR § 105.1(a-f). *Davis v. Henderson*, 652 A.2d 634, 1995 D.C. App. LEXIS 2 (1995).

District of Columbia statutes and regulations do not create protected liberty interest in being reconsidered for parole at any specific time, since parole statute and regulations vest substantial discretion in Board of Parole in granting or denying parole and in setting reconsideration date following initial denial of parole. D.C. Code 1981, § 24-204(a) (repealed); D.C. Mun.Reg. tit. 28, § 104.2, 200.1, 204.1, 204.22; U.S. Const.Amend. 5. *White v. Hyman*, 647 A.2d 1175, 1994 D.C. App. LEXIS 174 (1994).

Decision to grant or deny parole, on eligibility, is within discretion of Parole Board. D.C. Code 1981, § 24-204(a). *Murray v. Stempson*, 633 A.2d 48, 1993 D.C. App. LEXIS 275 (1993).

Review.

Judicial review of dispositional phase of parole revocation proceedings is available, if at all, only after the violator has pursued his administrative remedies. 18 U.S.C. § 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

Revocation of parole.

Parolee did not show that revocation of parole by the District of Columbia Board of Parole (BOP) violated substantive due process on ground it totally lacked evidentiary support; Board had before it parolee's admission that he failed to report, and his parole officer's statement that he had instructed parolee upon his release to report back to him on particular date. *Duckett v. Quick*, 282 F.3d 844, 2002 U.S. App. LEXIS 4192 (C.A.D.C. 2002), writ of certiorari denied by 537 U.S. 863, 123 S. Ct. 247, 154 L. Ed. 2d 104, 2002 U.S. LEXIS 5801, 71 U.S.L.W. 3238 (2002).

Parolee did not establish that he was denied the right to confront and cross-examine adverse witnesses because the District of Columbia Board of Parole (BOP) did not allow him to cross-examine his parole officer and did not find good cause why he should not be allowed to do so; there was no indication that parolee, who was represented by counsel at the revocation hearing, asked to cross-examine his parole officer. *Duckett v. Quick*, 282 F.3d 844, 2002 U.S. App. LEXIS 4192 (C.A.D.C. 2002), writ of certiorari denied by 537 U.S. 863, 123 S. Ct. 247, 154 L. Ed. 2d 104, 2002 U.S. LEXIS 5801, 71 U.S.L.W. 3238 (2002).

Evidence that District of Columbia Board of Parole denied revocation hearings within 60 days and even within 90 days to small but

significant number of alleged parole violators could not support injunction in § 1983 action requiring Board to conduct all final parole revocation hearings within 90 days of execution of warrant; injunction was warranted only if there was pervasive pattern flowing from deliberate plan by named defendants, that pattern could not be established without evidence that local officials had direct responsibility for allegedly unconstitutional behavior or that incidence of such misconduct was more severe than elsewhere, and unadorned statistical evidence was insufficient. 42 U.S.C. § 1983. *Ellis v. District of Columbia*, 84 F.3d 1413, 1996 U.S. App. LEXIS 12308 (C.A.D.C. 1996).

Due process clause did not require District of Columbia Board of Parole to hold evidentiary hearing to determine whether probable cause supported arrest warrant for parole violation; parole officer may not issue warrant, but Board issues it based on determination of probable cause and thus functions as magistrate. U.S. Const.Amend. 5, 14; D.C.Mun.Reg. title 28, §§ 217.3, 217.5, 217.7. *Ellis v. District of Columbia*, 84 F.3d 1413, 1996 U.S. App. LEXIS 12308 (C.A.D.C. 1996).

Consolidating preliminary and final hearings in single proceeding for revocation of parole is constitutionally permissible under due process clause. U.S. Const.Amend. 5, 14. *Ellis v. District of Columbia*, 84 F.3d 1413, 1996 U.S. App. LEXIS 12308 (C.A.D.C. 1996).

The parole board has a wide choice of dispositional alternatives: (1) it may excuse the violation altogether and withdraw its warrant; (2) it may immediately revoke parole; and (3) it may withhold revocation until parolee has completed service of his intervening sentence and then revoke parole. 18 U.S.C. §§ 4164, 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

Where fact of parole violation has been conclusively established by an adjudication, either state or federal, that a criminal offense was committed during release period, parole violator may apply to parole board for immediate determination of disposition to be made concerning consequences of his parole violation and to seek what is in effect concurrent service on all, or a part of, the unexpired portion of his original sentence with the sentence imposed for criminal offense which constituted the parole violation. 18 U.S.C. §§ 4164, 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

The parole board's jurisdiction to issue a violator warrant with respect to a mandatory releasee terminates 180 days before expiration of the maximum sentence. 18 U.S.C. §§ 4164, 4203; D.C. Code §§ 24-204, 24-205. *Shelton v.*

United States Board of Parole, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

Where federal prisoner had been released at expiration of sentence less good-time deductions, and was convicted in Municipal Court for District of Columbia of charges of attempted procuring and vagrancy while so conditionally released, detention of prisoner, upon completion of the municipal court sentence, to abide hearing before United States Board of Parole to determine whether prisoner had violated terms of conditional release was lawful under the federal conditional release statute. 18 U.S.C. §§ 4161-4166; D.C. Code 1951, § 24-204. *Johnson v. Ward*, 278 F.2d 245, 1960 U.S. App. LEXIS 5064 (C.A.D.C. 1960).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of Columbia*, 191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

Any right to commutation which defendant may have earned for good conduct at any time prior to recommitment was conditional and was forfeited by violation of parole. D.C. Code 1940, § 24-204. *Jones v. Clemmer*, 163 F.2d 852, 1947 U.S. App. LEXIS 2340 (1947).

Habeas petitioner was not entitled to 25 months of sentence credit on contention that he was mistakenly released into the community after serving prison term in foreign jurisdiction because District of Columbia officials failed to file parole violation warrant as a detainer in foreign jurisdiction; failure to lodge detainer was merely simple neglect, and manner in which petitioner re-entered the District's justice system was inconsistent with notion that he successfully readjusted to the community, as he was arrested and charged with first-degree sexual abuse of a 13-year-old child, an act that he admitted at the parole revocation hearing. *Wells v. United States*, 802 A.2d 352, 2002 D.C. App. LEXIS 378 (2002).

A parole revocation hearing is subject to minimal constitutional due process protections, which include: (1) written notice of claimed violations of parole; (2) disclosure of evidence against parolee; (3) opportunity to be heard in person and to present witnesses and documentary evidence; (4) right to confront and cross-examine adverse witnesses, unless hearing officer specifically finds good cause for not allowing confrontation; (5) neutral and detached hearing body such as traditional parole board, members of which need not be judicial officers or lawyers; and (6) written statement by factfinders as to evidence relied on and

reasons for revoking parole. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

A person on parole who is subject to revocation must have an effective opportunity to rebut the allegations against him. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Upon request, a person who is providing adverse information at the parole revocation hearing should be made available for cross examination in the presence of the parolee. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Although a parole revocation hearing is not a criminal prosecution and does not have all of the safeguards of a criminal trial, the rights of confrontation and cross-examination are among the minimum requirements of due process in such a proceeding. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

If an informant would be subjected to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination at the parole revocation hearing. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The parolee's right to scrutinize documents containing incriminating information that will be used against him at his parole revocation hearing is just as important as his right to question adverse witnesses. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The parolee, whose due process liberty interest is at stake, and society, have an interest in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole, given the breach of parole conditions. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The very purpose of notice and a hearing is to permit a parolee the opportunity to contest the facts and present a defense or mitigating factors at the parole revocation hearing. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The safety exception for protecting the informant's identity at a parole revocation hearing logically extends to documentary information. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The safety exception regarding disclosure of documentary information at a parole revocation hearing requires the Parole Board to disclose to the parolee so much of the substance of the informants' accusatory statements as it finds consistent with their safety. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Parole Board's mere determination that complaining witness at parole revocation hearing, whose identity was already known to parolee, was concerned for her safety did not support

Board's restriction of parolee's right to confront and cross-examine the witness. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

A parolee's confrontation rights at the parole revocation hearing cannot be satisfied by allowing counsel to be present to cross-examine the witness; the parolee has the right to be personally present. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Neither the parolee's nor the government's interest is fostered by the risk of parole revocation based on erroneous impressions or conclusions grounded on innuendo or exaggeration, as distinguished from verified facts. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

At a parole revocation hearing, the Parole Board engages in a two-step analysis: it first makes a factual determination whether a parole violation occurred, and if it finds such a violation, it exercises its discretion to select an appropriate sanction. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Parolee's admission that he broke into victim's home and that he violated the protective order that victim had obtained established a violation of parole. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The parole revocation hearing must be provided within a reasonable time after a parolee is taken into custody. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Retroactive application to revoked parolees of decision invalidating administrative regulation that purported to preserve "street time" credit after revocation of parole did not violate Constitutional prohibition against ex post facto laws, where administrative regulation at issue was invalid from its inception as directly contrary to pre-existing statutory street time forfeiture provision. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Retroactive application to revoked parolees of decision invalidating regulation that purported to preserve "street time" credit after revocation of parole did not violate due process, where decision was not unforeseeable and offenders were on actual notice of possibility that they might lose street time upon revocation of parole; decision at issue did not overrule prior case law, employed accepted principles of statutory interpretation, and followed federal construction of regulation at issue, and federal construction had applied to some local revoked parolees since regulation's adoption, at discretion of the Attorney General. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Frustration of inmates' reasonable expectation of release on date certain, occasioned by recalculation of their sentences, in accordance with judicial construction of relevant statute

and regulation, to subtract street time credit from their total credits against sentence, although regrettable, did not rise to level of due process violation, absent other, more tangible prejudice. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Rule announced in United States Parole Comm'n v. Noble, that Good Time Credits Act (GTCA) did not repeal pre-existing statutory street time forfeiture provision, applied retroactively to authorize recomputation by Department of Corrections of sentences of inmates imprisoned following revocation of parole, in order to subtract their street time credit from total credits against their sentences; Court of Appeals reserved question of retroactivity in Noble because it was answering question of law certified to it from federal court, which court did apply the rule retroactively, and case before the Court was not so exceptional as to mandate prospective-only application. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Decision to terminate parole and issue warrants for violation of the conditions of parole is within the sole authority of the Board of Parole. D.C. Code 1981, § 24-204. *Poteat v. United States*, 559 A.2d 334, 1989 D.C. App. LEXIS 109 (1989).

Where conviction itself triggered revocation of probation for prior offense, which would have occurred without regard to length of appeal from conviction for current offense, court could not conclude that defendant was prejudiced from incarceration based upon mere speculative disability that, had there been more rapid appellate process, defendant could have expected retrial and release, if acquitted, before date when he was actually paroled, and thus trial court's finding of prejudice was insufficiently supported. D.C. Code §§ 17-305(a), 23-1321, 24-204, 24-205, 24-206; U.S. Const. Amend. 5. *United States v. Alston*, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

Rules and regulations.

District of Columbia Board of Parole (BOP) did not deny parolee due process when it failed to comply with District of Columbia regulation requiring that it discuss in its written parole revocation decision its consideration of each factor listed in parole revocation regulation, as procedures required for procedural due process derive from the Constitution, not from local or municipal regulation. *Duckett v. Quick*, 282 F.3d 844, 2002 U.S. App. LEXIS 4192 (C.A.D.C. 2002), writ of certiorari denied by 537 U.S. 863, 123 S. Ct. 247, 154 L. Ed. 2d 104, 2002 U.S. LEXIS 5801, 71 U.S.L.W. 3238 (2002).

Where parole boards recently issued new regulations, in lieu of informal procedures, concerning the processing and disposition of applications for withdrawal or execution of parole

violation warrants prior to expiration of the intervening sentence, appeals not otherwise disposed of would be remanded so that petitioners might pursue the administrative remedies provided in those regulations. 18 U.S.C. §§ 4164, 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

Supervision of parolees.

Where federal prisoner was released pursuant to provision of federal statute that a prisoner who has served term for which he was sentenced, less deductions allowed for good conduct, shall upon release be treated as if released on parole and be subject to laws relating to parole of federal prisoners until expiration of maximum term specified in sentence, released prisoner was under supervision of parole board until maximum sentence, not counting time off for good behavior, expired, as against contention that because parole law in effect when original criminal acts were committed provided for measurement of parole period by maximum sentence less good time allowance, prisoner could not be subject to conditions of parole law after his release because he had served maximum sentence less good-time allowance. 18 U.S.C. §§ 4163, 4164; D.C. Code 1940, § 24-204. *Hicks v. Reid*, 194 F.2d 327, 1952 U.S. App. LEXIS 2768 (C.A.D.C. 1952).

Where writ of habeas corpus challenged power of the District of Columbia Board of Indeterminate Sentence and Parole to impose conditions or to exercise supervision over prisoners convicted in the District of Columbia and thereafter released because of good conduct allowance and the United States Court of Appeals, District of Columbia, had theretofore determined that the board had such power, trial court was required to deny the writ, and fact that writ was also denied on another allegedly insufficient ground was immaterial. 18 U.S.C. §§ 3568, 4161, 4164, 4201, 4203, 4204; D.C. Code 1940, §§ 24-204, 24-208. *In re Reed*, 158 F.2d 323, 1946 U.S. App. LEXIS 2385 (1946).

The District of Columbia Board of Indeterminate Sentence and Parole has authority to

impose conditions or to exercise supervision over prisoners convicted in the District of Columbia and thereafter released because of good conduct allowance. 18 U.S.C. §§ 3568, 4161, 4164, 4201, 4203, 4204; D.C. Code 1940, §§ 24-204, 24-208. *In re Reed*, 158 F.2d 323, 1946 U.S. App. LEXIS 2385 (1946).

United States Parole Commission was well within its authority to initiate revocation proceedings against parolee, notwithstanding parolee's claim that he should have been released from parole prior to his probation revocation hearing, where parolee was under the Commission's supervision at the time of the alleged violation. *Ferguson v. Wainwright*, 849 F.Supp.2d 1, 2012 U.S. Dist. LEXIS 42184 (2012).

Where defendant was sentenced in 1936 to 30-year term for second-degree murder and was given conditional release when his accumulated good time and industrial good time allowances and his time already served totalled 30 years, defendant was thereafter under the supervision of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. 18 U.S.C. §§ 4161-4164, 4202; D.C. Code 1940, §§ 24-203, 24-204; Act June 6, 1940, § 9(b), 54 Stat. 244. *Johnson v. Ward*, 171 F.Supp. 26, 1959 U.S. Dist. LEXIS 3530 (D.D.C.1959).

While parolee on unsupervised status was freed from duty of reporting to parole officer, freedom was only conditional, and he was still on parole for his conviction when he applied for hacker's license, and thus he fell within class of applicants whom regulations excluded from eligibility for licenses. D.C. Code 1981, §§ 14-305(b)(2)(A)(ii), 24-204(b). *Allen v. District of Columbia Hackers' License Appeal Bd.*, 471 A.2d 271, 1984 D.C. App. LEXIS 305 (1984).

Termination of parole.

While termination of supervision reflects finding that parolee's rehabilitation is substantially complete, termination of supervision is not termination of parole. D.C. Code 1981, § 24-204(b). *Allen v. District of Columbia Hackers' License Appeal Bd.*, 471 A.2d 271, 1984 D.C. App. LEXIS 305 (1984).

§ 24-405. Arrest for violation of parole.

If said Board of Parole, or any member thereof, shall have reliable information that a prisoner has violated his parole, said Board, or any member thereof, at any time within the term or terms of the prisoner's sentence, may issue a warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner. Any officer of the District of Columbia penal institutions, any officer or designated civilian employee of the Metropolitan Police Department of the District of Columbia, or any federal officer authorized

to serve criminal process within the United States to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such prisoner and returning or removing him to the penal institution of the District of Columbia from which he was paroled or to such penal or correctional institution as may be designated by the Attorney General of the United States.

(July 15, 1932, 47 Stat. 698, ch. 492, § 5; June 6, 1940, 54 Stat. 242, ch. 254, § 4; July 17, 1947, 61 Stat. 378, ch. 263, § 2; June 12, 1999, D.C. Law 12-284, § 9, 46 DCR 1328.)

Cross references. — Representation of indigents, see §§ 2-1602 and 11-2601.

Rewards for apprehension of parole violators, see § 24-201.27.

Section references. — This section is referred to in § 24-407.

Prior Codifications. — 1981 Ed., § 24-205. 1973 Ed., § 24-205.

Temporary Amendment of Section. — Section 9 of D.C. Law 12-282 inserted “or designated civilian employee.”

Section 13(b) of D.C. Law 12-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 9 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 9 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 9 of the Metropolitan Police Department Civilianization Congressional Re-

view Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 12-282. — Law 12-282, the “Metropolitan Police Department Civilianization Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-709. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 13, 1998, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-282 became effective on May 28, 1999.

Legislative history of Law 12-284. — Law 12-284, the “Metropolitan Police Department Civilianization Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-710, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-284 became effective on June 12, 1999.

CASE NOTES

ANALYSIS

Concurrent sentences.
Discretion of board.
Hearings.
Issuance of warrants.
Jurisdiction.
Review.
Rules and regulations.

Concurrent sentences.

Where fact of parole violation has been conclusively established by an adjudication, either state or federal, that a criminal offense was committed during release period, parole violator may apply to parole board for immediate determination of disposition to be made concerning consequences of his parole violation and to seek what is in effect concurrent service on all, or a part of, the unexpired portion of his original sentence with the sentence imposed for criminal offense which constituted the parole

violation. 18 U.S.C. §§ 4164, 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

Prisoner was not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. D.C. Code 1961, §§ 24-205, 24-206; 18 U.S.C. §§ 4161, 4162, 4205, 4207. *Howerton v. Rivers*, 326 F.2d 653, 1963 U.S. App. LEXIS 3633 (C.A.D.C. 1963).

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of Columbia*, 191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

Failure of Board of Parole to give immediate

hearing and revoke parole when paroled prisoner was returned to reformatory pursuant to sentences for crimes committed while on parole did not permit parole to continue running in satisfaction of original sentences after prisoner's re-entry of reformatory. D.C. Code 1940, §§ 24-205, 24-206. *Washington v. Clemmer*, 169 F.2d 300, 1948 U.S. App. LEXIS 2209 (1948).

Discretion of board.

The parole board has a wide choice of dispositional alternatives: (1) it may excuse the violation altogether and withdraw its warrant; (2) it may immediately revoke parole; and (3) it may withhold revocation until parolee has completed service of his intervening sentence and then revoke parole. 18 U.S.C. §§ 4164, 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

The parole board is vested with broad discretion in the dispositional process. 18 U.S.C. § 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

Even though parolees were no longer being detained on parole violator warrant issued by Board of Parole, parolees' appeals from denial of their habeas corpus petitions were not "moot" in action alleging that Trustee for Offender Supervision exceeded his legal authority by unilaterally promulgating "directive" requiring Board to issue parole violator warrants in situations in which Board's regulations rendered that decision discretionary; issue was capable of repetition without review, and it would be difficult in that type of case to obtain effective judicial review during period of detention preceding parole revocation hearing. D.C. Code 1981, § 24-205; D.C.Mun.Reg. title 28, §§ 217.3, 217.6. *Teachey v. Carver*, 736 A.2d 998, 1999 D.C. App. LEXIS 196 (1999).

Board of Parole acted inconsistently with its own regulations when it issued parole violator warrants in accordance with Trustee for Offender Supervision's "directive" requiring Board to issue parole violator warrants in situations in which Board's regulations rendered that decision discretionary; there was no evidence that Board exercised its discretion either before or after issuing parole violator warrants, but rather, Board simply complied with Trustee's directive. D.C. Code 1981, § 24-205; D.C.Mun.Reg. title 28, §§ 217.3, 217.6. *Teachey v. Carver*, 736 A.2d 998, 1999 D.C. App. LEXIS 196 (1999).

Portion of Revitalization Act providing that Trustee for Offender Supervision "shall _____ [h]ave the authority to direct the actions of [i, inter alia,] the Board of Parole" did not authorize Trustee to unilaterally promulgate "directive" requiring Board to issue parole

violation warrants in situations in which Board's regulations rendered that decision discretionary. D.C. Code 1981, §§ 24-205, 24-232(b)(2); D.C.Mun.Reg. title 28, §§ 217.3, 217.6. *Teachey v. Carver*, 736 A.2d 998, 1999 D.C. App. LEXIS 196 (1999).

"Directive" unilaterally promulgated by Trustee for Offender Supervision, requiring Board of Parole to issue parole violator warrants in situations in which Board's regulations rendered that decision discretionary, was subject to requirements of District of Columbia Administrative Procedure Act (DCAPA); "directive" was statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or to describe Board's procedure or practice requirements. D.C. Code 1981, §§ 1-1502(6), 24-205, 24-232(b)(2); D.C.Mun.Reg. title 28, §§ 217.3, 217.6. *Teachey v. Carver*, 736 A.2d 998, 1999 D.C. App. LEXIS 196 (1999).

Hearings.

Where, at hearing before Board of Indeterminate Sentence and Parole of District of Columbia to revoke a parole, parolee's counsel was not permitted to appear, parolee's employer was not permitted to testify, and parole was revoked, parolee's statutory right to appear before the board was violated and parolee would be discharged on habeas corpus without prejudice to subsequent proceedings for revocation of his parole in conformity with the statute. D.C. Code 1940, §§ 24-205, 24-206. *In re Tate*, 63 F.Supp. 961, 1946 U.S. Dist. LEXIS 2945 (D.D.C.1946).

A parole revocation hearing is subject to minimal constitutional due process protections, which include: (1) written notice of claimed violations of parole; (2) disclosure of evidence against parolee; (3) opportunity to be heard in person and to present witnesses and documentary evidence; (4) right to confront and cross-examine adverse witnesses, unless hearing officer specifically finds good cause for not allowing confrontation; (5) neutral and detached hearing body such as traditional parole board, members of which need not be judicial officers or lawyers; and (6) written statement by factfinders as to evidence relied on and reasons for revoking parole. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

A person on parole who is subject to revocation must have an effective opportunity to rebut the allegations against him. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Upon request, a person who is providing adverse information at the parole revocation hearing should be made available for cross examination in the presence of the parolee. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Although a parole revocation hearing is not a criminal prosecution and does not have all of the safeguards of a criminal trial, the rights of confrontation and cross-examination are among the minimum requirements of due process in such a proceeding. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

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Neither the parolee's nor the government's interest is fostered by the risk of parole revocation based on erroneous impressions or conclu-

sions grounded on innuendo or exaggeration, as distinguished from verified facts. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

At a parole revocation hearing, the Parole Board engages in a two-step analysis: it first makes a factual determination whether a parole violation occurred, and if it finds such a violation, it exercises its discretion to select an appropriate sanction. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Parolee's admission that he broke into victim's home and that he violated the protective order that victim had obtained established a violation of parole. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The parole revocation hearing must be provided within a reasonable time after a parolee is taken into custody. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Issuance of warrants.

The parole board's jurisdiction to issue a violator warrant with respect to a mandatory releasee terminates 180 days before expiration of the maximum sentence. 18 U.S.C. §§ 4164, 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

The District of Columbia Parole Board did not err in acting pursuant to D.C. Parole Act with regard to prisoner who had been convicted of a federal crime rather than offense made criminal by D.C. Code, since the act establishing D.C. Parole Board transferred authority over prisoners held in District prisons to D.C. Board, and provisions of D.C. Parole Act, rather than federal parole law, were to be applied to such prisoners. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1939) § 2553(a); 18 U.S.C. §§ 4161, 4162, 4205, 4207; D.C. Code 1961, §§ 24-205, 24-206. *Howerton v. Rivers*, 326 F.2d 653, 1963 U.S. App. LEXIS 3633 (C.A.D.C. 1963).

Jurisdiction.

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of Columbia*, 191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

Government did not lose jurisdiction over parolee by failing to execute parole violation warrant until some 25 months after parolee

was released from prison in foreign jurisdiction; District of Columbia parole officials were not obliged to execute the warrant before parolee's release by foreign authorities, and even then due process did not require them to act so long as parolee still had two unexecuted, in fact wholly unserved, District of Columbia sentences that served as the basis for the parole violation. *Wells v. United States*, 802 A.2d 352, 2002 D.C. App. LEXIS 378 (2002).

Review.

The parole board's selection of a particular disposition, after full and fair consideration of available facts, may be regarded as almost unreviewable, but failure to afford a procedure whereby violator may seek a favorable disposition, or an outright refusal to consider proffered evidence in mitigation, is not immune from judicial overview. 18 U.S.C. § 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

Judicial review of dispositional phase of parole revocation proceedings is available, if at all, only after the violator has pursued his administrative remedies. 18 U.S.C. § 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

Trial court did not have authority to stay execution of parole violation warrant so that defendant could help locate a defense witness

prior to trial on current charges. D.C. Code 1981, § 24-205; Criminal Rules 32.1, 32.1(a)(3). *Poteat v. United States*, 559 A.2d 334, 1989 D.C. App. LEXIS 109 (1989).

Where conviction itself triggered revocation of probation for prior offense, which would have occurred without regard to length of appeal from conviction for current offense, court could not conclude that defendant was prejudiced from incarceration based upon mere speculative disability that, had there been more rapid appellate process, defendant could have expected retrial and release, if acquitted, before date when he was actually paroled, and thus trial court's finding of prejudice was insufficiently supported. D.C. Code §§ 17-305(a), 23-1321, 24-204, 24-205, 24-206; U.S. Const. Amend. 5. *United States v. Alston*, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

Rules and regulations.

Where parole boards recently issued new regulations, in lieu of informal procedures, concerning the processing and disposition of applications for withdrawal or execution of parole violator warrants prior to expiration of the intervening sentence, appeals not otherwise disposed of would be remanded so that petitioners might pursue the administrative remedies provided in those regulations. 18 U.S.C. §§ 4164, 4203; D.C. Code §§ 24-204, 24-205. *Shelton v. United States Board of Parole*, 388 F.2d 567, 1967 U.S. App. LEXIS 4672 (C.A.D.C. 1967).

§ 24-406. Hearing after arrest; confinement in non-District institution.

(a) When a prisoner has been retaken upon a warrant issued by the United States Parole Commission ("Commission"), he shall be given an opportunity to appear before the Commission, a member thereof, or an examiner designated by the Commission. At such hearing he may be represented by counsel. The Commission may then, or at any time in its discretion, revoke the parole or modify the terms and conditions thereof. If the order of parole shall be revoked, the prisoner, unless subsequently reparaoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return to custody. For the purpose of computing commutation for good conduct, the remainder of the sentence originally imposed shall be considered as a new sentence.

(b) Repealed.

(c)(1) Except as provided in paragraphs (2) and (3) of this subsection, a parolee shall receive credit toward completion of the sentence for all time served on parole.

(2) If a parolee is convicted of a crime committed during a period of parole, the Commission:

(A) Shall order that the parolee not receive credit for that period of

parole if the crime is punishable by a term of imprisonment of more than one year; or

(B) Shall order that the parolee not receive credit for that period of parole if the crime is punishable by a term of imprisonment of one year or less unless the Commission determines that such forfeiture of credit is not necessary to protect the public welfare.

(3) If, during the period of parole, a parolee intentionally refuses or fails to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent of the Commission, the Commission may order that the parolee not receive credit for the period of time that the Commission determines that the parolee failed or refused to respond to such a request, order, summons, or warrant.

(d) The provisions of subsection (c) of this section shall apply only to any period of parole that is being served on or after the May 20, 2009, and shall not apply to any period of parole that was revoked prior to the May 20, 2009.

(July 15, 1932, 47 Stat. 698, ch. 492, § 6; June 6, 1940, 54 Stat. 242, ch. 254, § 5; July 17, 1947, 61 Stat. 379, ch. 263, § 5; May 20, 2009, D.C. Law 17-389, § 3(b), 56 DCR 1196.)

Cross references. — Notice to chief of police of prisoner release, see § 5-113.05.

Section references. — This section is referred to in §§ 5-113.05 and 24-407.

Prior Codifications. — 1981 Ed., § 24-206. 1973 Ed., § 24-206.

Effect of amendments. — D.C. Law 17-389 rewrote the section, which had read as follows:

“(a) When a prisoner has been retaken upon a warrant issued by the Board of Parole, he shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board. At such hearing he may be represented by counsel. The Board may then, or at any time in its discretion, terminate the parole or modify the terms and conditions thereof. If the order of parole shall be revoked, the prisoner, unless subsequently reparaoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return to custody. For the purpose of computing commutation for good conduct, the remainder

of the sentence originally imposed shall be considered as a new sentence. The time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced.

“(b) In the event a prisoner is confined in, or as a parolee is returned to a penal or correctional institution other than a penal or correctional institution of the District of Columbia, the Board of Parole created by § 723a of Title 18, United States Code, shall have and exercise the same power and authority as the Board of Parole of the District of Columbia had the prisoner been confined in or returned to a penal or correctional institution of the District of Columbia.”

Legislative history of Law 17-389. — For Law 17-389, see notes following § 24-221.03.

References in text. — Section 723a of Title 18 of the United States Code, referred to in subsection (b) of this section, was repealed by the Act of June 25, 1948, 62 Stat. 862, ch. 645, § 21.

CASE NOTES

ANALYSIS

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Concurrent sentences.

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of Columbia*,

191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

Failure of Board of Parole to give immediate hearing and revoke parole when paroled prisoner was returned to reformatory pursuant to sentences for crimes committed while on parole did not permit parole to continue running in satisfaction of original sentences after prisoner's re-entry of reformatory. D.C. Code 1940, §§ 24-205, 24-206. *Washington v. Clemmer*, 169 F.2d 300, 1948 U.S. App. LEXIS 2209 (1948).

The unexpired term of parole violator began to run only when he was recommitted after revocation of parole and did not run concurrently with sentences for new offenses committed while on parole. D.C. Code 1940, § 24-206. *Jones v. Clemmer*, 163 F.2d 852, 1947 U.S. App. LEXIS 2340 (1947).

Where conviction itself triggered revocation of probation for prior offense, which would have occurred without regard to length of appeal from conviction for current offense, court could not conclude that defendant was prejudiced from incarceration based upon mere speculative disability that, had there been more rapid appellate process, defendant could have expected retrial and release, if acquitted, before date when he was actually paroled, and thus trial court's finding of prejudice was insufficiently supported. D.C. Code §§ 17-305(a), 23-1321, 24-204, 24-205, 24-206; U.S. Const. Amend. 5. *United States v. Alston*, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

Construction and application.

The District of Columbia Parole Board did not err in acting pursuant to D.C. Parole Act with regard to prisoner who had been convicted of a federal crime rather than offense made criminal by D.C. Code, since the act establishing D.C. Parole Board transferred authority over prisoners held in District prisons to D.C. Board, and provisions of D.C. Parole Act, rather than federal parole law, were to be applied to such prisoners. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1939) § 2553(a); 18 U.S.C. §§ 4161, 4162, 4205, 4207; D.C. Code 1961, §§ 24-205, 24-206. *Howerton v. Rivers*, 326 F.2d 653, 1963 U.S. App. LEXIS 3633 (C.A.D.C. 1963).

Congress intended to provide uniform administration of federal and District of Columbia law with respect to control of released prisoners. 18 U.S.C. §§ 4161-4166; D.C. Code 1951, §§ 24-204, 24-206, 24-209, 24-401, 24-402, 24-405. *Johnson v. Ward*, 278 F.2d 245, 1960 U.S. App. LEXIS 5064 (C.A.D.C. 1960).

The amendment of parole statute so as to permit parole violator upon recommitment to earn commutation for good conduct was remedial and was to be construed liberally. Act July 17, 1947, § 5, 61 Stat. 379, D.C. Code 1940,

§ 24-206. *Jones v. Clemmer*, 163 F.2d 852, 1947 U.S. App. LEXIS 2340 (1947).

The revocation of District of Columbia prisoner's "street time" as a result of his parole violations in no way violated the Eighth Amendment's prohibition against cruel and unusual punishment by extending prisoner's sentence beyond its expiration date; because prisoner's parole was revoked, he had to serve the remainder of the sentence originally imposed, and by agreeing to the United States Parole Commission's (USPC) expedited revocation proposal, prisoner accepted the forfeiture of street time. *Coachman v. United States Parole Comm'n*, 816 F.Supp.2d 20, 2011 U.S. Dist. LEXIS 114592 (2011).

The issuance of a parole violator warrant by the United States Parole Commission (USPC) prior to expiration of the parolee's sentence operated to bar the expiration of the sentence and maintained the USPC's jurisdiction to retake the parolee, either before or after the normal expiration date of the sentence, and to reach a final decision as to the revocation of parole and the forfeiture of time pursuant to District of Columbia statute. *Bethea v. United States Parole Comm'n*, 751 F.Supp.2d 83, 2010 U.S. Dist. LEXIS 118375 (2010).

The principle of comity did not apply to require parolee whose parole arose out of conviction in District of Columbia Superior Court, but who was in the custody of the United States Parole Commission (USPC) rather than of a state correctional facility, to bring habeas petition in the District of Columbia Superior Court before bringing habeas petition in federal court. *Owens v. Gaines*, 219 F.Supp.2d 94, 2002 U.S. Dist. LEXIS 16122 (2002).

Retroactive application to revoked parolees of decision invalidating administrative regulation that purported to preserve "street time" credit after revocation of parole did not violate Constitutional prohibition against ex post facto laws, where administrative regulation at issue was invalid from its inception as directly contrary to pre-existing statutory street time forfeiture provision. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Department of Corrections had no authority to abrogate by its regulations previously enacted statutory street time forfeiture provision, and its correction of its erroneous interpretation of that law was not equivalent of change in the law for purposes of ex post facto analysis. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Opinion of corporation counsel regarding whether parole statute impliedly repealed statute banning credit for time served on parole if parole was revoked was not entitled to deference; implied repeal was issue for court, as final arbitrator within judicial system, notwithstanding corporation counsel's role as legal ad-

visor to District of Columbia government and potentially persuasive power of office's opinions. D.C. Code 1981, §§ 24-206(a), 24-431(a). *United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Enactment of statute providing that every person shall be given credit toward service of sentence "for time spent in custody or on parole" did not impliedly repeal statute providing no credit against sentence for street time on parole if parole is revoked; possible, absolute meaning of "or on parole"—as including credit for street time after parole was revoked—was not clearly enough indicated to supplant interpretation that harmonized provisions, with one statute representing general application and other representing specified exception. D.C. Code 1981, §§ 24-206(a), 24-431(a). *United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Court was not required to defer to administrative interpretation of parole statute in determining pure question of law as to whether statute impliedly repealed earlier enactment banning credit for time spent on parole if parole was revoked; moreover, even if deference ordinarily due government agency for interpretation of statute it administered applied, statutory language and relevant history did not permit deference where reconciliation of statutes was reasonably possible. D.C. Code 1981, §§ 24-206(a), 24-431(a). *United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

Discretion of board.

Amendment to District of Columbia parole statute, requiring forfeiture of street-time credit only if parolee was convicted of crime committed during period of parole, did not apply to any period of parole that was revoked prior to amendment, and thus United States Parole Commission (USPC) had authority to forfeit parolee's street-time credit and extend his full-time sentence date, where parolee's parole was twice revoked prior to amendment. *Speight v. Fulwood*, 778 F.Supp.2d 99, 2011 U.S. Dist. LEXIS 44051 (2011).

The granting or revocation of a parole is within discretion of Board of Indeterminate Sentence and Parole of the District of Columbia. D.C. Code 1940, § 24-206. *In re Tate*, 63 F.Supp. 961, 1946 U.S. Dist. LEXIS 2945 (D.D.C.1946).

Good conduct credit.

The amendment of parole statute permitting parole violator to earn commutation for good conduct applied to service of remainder of sentences after recommitment, although sentences were originally imposed prior to the amendment. Act July 17, 1947, § 5, 61 Stat. 379, D.C.

Code 1940, § 24-206. *Jones v. Clemmer*, 163 F.2d 852, 1947 U.S. App. LEXIS 2340 (1947).

Writ of mandamus would be issued to require United States Parole Commission to reexamine its decision to rescind parolee's credit for time spent on parole in light of the Equitable Street Time Credit Amendment Act. *Ferguson v. Wainwright*, 849 F.Supp.2d 1, 2012 U.S. Dist. LEXIS 42184 (2012).

A prisoner has no constitutional or statutory right to restoration of good time credits, as such credits do not survive a prisoner's release on parole; rather, after parole is revoked, the acquisition of good time credit to advance a release date begins anew. *Brown v. U.S. Parole Comm'n*, 713 F.Supp.2d 11, 2010 U.S. Dist. LEXIS 50575 (2010).

Parolee was not entitled to credit toward service of his sentence for his stay at residential program akin to placement in a halfway house, which was a condition of parole. *Garner v. Caulfield*, 584 F.Supp.2d 167, 2008 U.S. Dist. LEXIS 97400 (2008).

Prisoner was in "custody" of United States Parole Commission, thus giving district court jurisdiction over his petition for writ of habeas corpus seeking credit against sentence, though he sought credit under District of Columbia Good Time Credits Act and portion of sentence at issue was related to District of Columbia offense, where he was detained by USPC in federal prison on aggregate federal and local sentences. 18 U.S.C. § 2241; D.C. Code 1981, § 24-428 et seq. *Noble v. United States Parole Comm'n*, 887 F. Supp. 11, 1995 U.S. Dist. LEXIS 7704 (1995).

Hearings.

Where violation of parole consisted in not reporting to parole headquarters immediately upon release and parolee remained at liberty four years without acquiring any criminal record, and his parole had been mandatory, absence of counsel at parole revocation proceeding warranted setting aside order of revocation. 18 U.S.C. § 4164, 4207; 18 U.S.C. § 2106; D.C. Code § 24-206. *Baker v. Sard*, 486 F.2d 415, 1973 U.S. App. LEXIS 8192 (C.A.D.C. 1972).

Alleged parole violator was entitled to present testimony of witnesses appearing voluntarily. 18 U.S.C. §§ 4163, 4164, 4207; D.C. Code 1951, § 24-206. *Reed v. Butterworth*, 297 F.2d 776, 1961 U.S. App. LEXIS 3239 (C.A.D.C. 1961).

A parole violator, who was returned to prison without permitting counsel who had previously represented prisoner to appear in his behalf or permitting his employer to testify, was entitled to release in habeas corpus proceeding. D.C. Code 1940, § 24-206. *Fleming v. Tate*, 156 F.2d 848, 1946 U.S. App. LEXIS 2649 (1946).

The statutory provision that a paroled prisoner arrested for violation of parole should be

given an opportunity to appear before board meant an effective appearance, including presence of counsel, if desired by prisoner, and receipt of testimony if he has testimony to present. D.C. Code 1940, § 24-206. *Fleming v. Tate*, 156 F.2d 848, 1946 U.S. App. LEXIS 2649 (1946).

Although parole violator is entitled to present testimony at hearing before board, it is not required that receipt of testimony be governed by strict rules of evidence. D.C. Code 1940, § 24-206. *Fleming v. Tate*, 156 F.2d 848, 1946 U.S. App. LEXIS 2649 (1946).

Under statutory provision that prisoner arrested for violation of parole should be given opportunity to appear before board, parolee should be permitted to present any pertinent matter, and, although board's discretion in continuing or revoking parole is uncontrolled, it cannot act in disregard of facts or refuse to hear argument. D.C. Code 1940, § 24-206. *Fleming v. Tate*, 156 F.2d 848, 1946 U.S. App. LEXIS 2649 (1946).

Federal prisoner had right to prompt parole revocation hearing on parole revocation detainer warrant lodged against him while he was serving ten-year term in federal penitentiary, and parole board could not wait until prisoner's current sentence had been served before holding hearing or revoking parole. D.C. Code §§ 24-206, 24-209; 18 U.S.C. § 4207; U.S. Const. Amend. 5. *Sutherland v. District of Columbia Board of Parole*, 366 F. Supp. 270, 1973 U.S. Dist. LEXIS 11124 (1973).

Parole board must consider mitigating circumstances and rehabilitative potential as well as existence of parole violations before determining that reincarceration is appropriate. D.C. Code § 24-206; 18 U.S.C. § 4207. *Sutherland v. District of Columbia Board of Parole*, 366 F. Supp. 270, 1973 U.S. Dist. LEXIS 11124 (1973).

Where, at hearing before Board of Indeterminate Sentence and Parole of District of Columbia to revoke a parole, parolee's counsel was not permitted to appear, parolee's employer was not permitted to testify, and parole was revoked, parolee's statutory right to appear before the board was violated and parolee would be discharged on habeas corpus without prejudice to subsequent proceedings for revocation of his parole in conformity with the statute. D.C. Code 1940, §§ 24-205, 24-206. *In re Tate*, 63 F.Supp. 961, 1946 U.S. Dist. LEXIS 2945 (D.D.C.1946).

On writ of habeas corpus, District Court had no jurisdiction to review on merits a revocation of a parole by the Board of Indeterminate Sentence and Parole of District of Columbia, and only issue was whether petitioner had been deprived of his legal rights by manner in which revocation hearing was conducted. D.C. Code

1940, § 24-206. *In re Tate*, 63 F.Supp. 961, 1946 U.S. Dist. LEXIS 2945 (D.D.C.1946).

The statute providing that a prisoner shall be given an opportunity to "appear" before the Board of Indeterminate Sentence and Parole of District of Columbia contemplates an effective appearance and not the mere physical presence of prisoner, and implies that he must be given a "hearing" wherein he is entitled to be represented by retained counsel, present evidence, and adduce witnesses. D.C. Code 1940, § 24-206. *In re Tate*, 63 F.Supp. 961, 1946 U.S. Dist. LEXIS 2945 (D.D.C.1946).

Under statute providing that a prisoner returned to an institution for alleged violation of his parole shall be given an opportunity to appear before the Board of Indeterminate Sentence and Parole of District of Columbia, a summary and informal hearing is sufficient. D.C. Code 1940, § 24-206. *In re Tate*, 63 F.Supp. 961, 1946 U.S. Dist. LEXIS 2945 (D.D.C.1946).

A parole revocation hearing is subject to minimal constitutional due process protections, which include: (1) written notice of claimed violations of parole; (2) disclosure of evidence against parolee; (3) opportunity to be heard in person and to present witnesses and documentary evidence; (4) right to confront and cross-examine adverse witnesses, unless hearing officer specifically finds good cause for not allowing confrontation; (5) neutral and detached hearing body such as traditional parole board, members of which need not be judicial officers or lawyers; and (6) written statement by factfinders as to evidence relied on and reasons for revoking parole. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

A person on parole who is subject to revocation must have an effective opportunity to rebut the allegations against him. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Upon request, a person who is providing adverse information at the parole revocation hearing should be made available for cross examination in the presence of the parolee. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Although a parole revocation hearing is not a criminal prosecution and does not have all of the safeguards of a criminal trial, the rights of confrontation and cross-examination are among the minimum requirements of due process in such a proceeding. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

If an informant would be subjected to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination at the parole revocation hearing. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The parolee's right to scrutinize documents containing incriminating information that will be used against him at his parole revocation hearing is just as important as his right to question adverse witnesses. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The parolee, whose due process liberty interest is at stake, and society, have an interest in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole, given the breach of parole conditions. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The very purpose of notice and a hearing is to permit a parolee the opportunity to contest the facts and present a defense or mitigating factors at the parole revocation hearing. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The safety exception for protecting the informant's identity at a parole revocation hearing logically extends to documentary information. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The safety exception regarding disclosure of documentary information at a parole revocation hearing requires the Parole Board to disclose to the parolee so much of the substance of the informants' accusatory statements as it finds consistent with their safety. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Parole Board's mere determination that complaining witness at parole revocation hearing, whose identity was already known to parolee, was concerned for her safety did not support Board's restriction of parolee's right to confront and cross-examine the witness. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

A parolee's confrontation rights at the parole revocation hearing cannot be satisfied by allowing counsel to be present to cross-examine the witness; the parolee has the right to be personally present. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Neither the parolee's nor the government's interest is fostered by the risk of parole revocation based on erroneous impressions or conclusions grounded on innuendo or exaggeration, as distinguished from verified facts. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

At a parole revocation hearing, the Parole Board engages in a two-step analysis: it first makes a factual determination whether a parole violation occurred, and if it finds such a violation, it exercises its discretion to select an appropriate sanction. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Parolee's admission that he broke into victim's home and that he violated the protective

order that victim had obtained established a violation of parole. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

The parole revocation hearing must be provided within a reasonable time after a parolee is taken into custody. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Any error in Parole Board's not providing habeas petitioner with proposed order and opportunity to note objections in contested case was harmless; although petitioner alleged that he would have challenged certain statements in hearing examiner's report on hearsay grounds, he did not dispute that while on parole he was convicted of unauthorized use of automobile and petitioner admitted to hearing examiner that he had violated his parole in regard to his new conviction, his unemployment, his failure to make diligent efforts to find employment and his failure to carry out instructions from his parole officer and these statements to hearing examiner were tantamount to statement to Parole Board. D.C. Code 1981, §§ 1-1509(d), 24-206(a). *Bennett v. Ridley*, 633 A.2d 824, 1993 D.C. App. LEXIS 290 (1993).

Making statements to hearing examiner is tantamount to statement to Parole Board. D.C. Code 1981, § 24-206(a). *Bennett v. Ridley*, 633 A.2d 824, 1993 D.C. App. LEXIS 290 (1993).

Defendant's Fifth Amendment rights were violated by parole revocation based on a preliminary interview before the Parole Board in which the parole officer testified that his only knowledge of the alleged parole violation came from a Pretrial Services Agency report that the defendant had been arrested. *Matthews v. Palmer*, 113 WLR 2473 (Super. Ct. 1985).

Increase of sentence.

United States Parole Commission was required to rescind District of Columbia prisoner's street-time credit upon his multiple parole revocations and to recalculate his sentence accordingly under District of Columbia code provisions applicable prior to May 2009. *Jones v. Wainwright*, 744 F.Supp.2d 341, 2010 U.S. Dist. LEXIS 110982 (2010), appeal dismissed by 2011 U.S. App. LEXIS 17636 (D.C. Cir. Aug. 19, 2011).

Federal prisoner's custody based on a parole violator warrant issued by the United States Parole Commission did not unlawfully extend his sentence beyond the expiration date, where, upon each of his parole revocations, the number of days he spent on parole was properly rescinded, and thus no longer counted towards the service of his prison term; custody on the warrant did not involve the increase of a final sentence, but, rather, simply returned prisoner to the position he would have been in but for his release to parole. *Thompson v. D.C. Dep't of Corr.*, 511 F.Supp.2d 111, 2007 U.S. Dist. LEXIS 70085 (2007), appeal dismissed by 2009

U.S. App. LEXIS 12065 (D.C. Cir. June 3, 2009).

Jurisdiction of board.

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of Columbia*, 191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

United States Parole Commission (USPC) maintained jurisdiction over parolee to retake him and reach final decision as to revocation of parole and forfeiture of street-time credit, where parolee's District of Columbia sentence had not expired prior to USPC's issuance of violator warrant. *Speight v. Fulwood*, 778 F.Supp.2d 99, 2011 U.S. Dist. LEXIS 44051 (2011).

While District of Columbia authorities supervise prisoners who are confined to District of Columbia correctional facilities, the United States Parole Commission supervises parole of District of Columbia offenders housed at federal facilities. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Retroactive application.

Amendment to District of Columbia regulation to allow days spent on parole to be counted toward fulfillment of sentence of incarceration under certain defined circumstances did not apply retroactively to District of Columbia parolee whose parole was revoked before amendment took effect. *Washington v. U.S. Parole Comm'n*, 2012 WL 1606344 (2012).

Right to counsel.

Although parole violator is entitled to counsel at hearing before board if he so desires, it is not necessary that counsel be assigned, since requirement that counsel be present is not jurisdictional. D.C. Code 1940, § 24-206. *Fleming v. Tate*, 156 F.2d 848, 1946 U.S. App. LEXIS 2649 (1946).

Participation by counsel in proceedings against parole violator need be no greater than necessary to insure that board is accurately informed from parolee's standpoint before it acts, and permitted presentation of testimony parolee is governed by same rule. D.C. Code 1940, § 24-206. *Fleming v. Tate*, 156 F.2d 848, 1946 U.S. App. LEXIS 2649 (1946).

Under statute providing that a prisoner returned to an institution for alleged violation of his parole shall be given an opportunity to

appear before the Board of Indeterminate Sentence and Parole of District of Columbia, right of counsel is statutory and not constitutional, and prisoner would not be entitled to have counsel assigned to represent him. D.C. Code 1940, § 24-206; U.S. Const. Amend. 6. *In re Tate*, 63 F.Supp. 961, 1946 U.S. Dist. LEXIS 2945 (D.D.C.1946).

Time on parole.

Refusal of United States Parole Commission, in sentencing prisoner upon parole revocation, to credit prisoner with time spent on parole, under governing District of Columbia statute, did not violate prisoner's right to equal protection, although prisoners in custody of District of Columbia Department of Corrections were given credit for such time pursuant to misapplication of statute, as prisoner was not similarly situated to prisoners who were not in federal custody, and difficulty of rearresting inmates who were already released would provide rational basis for the disparate treatment. U.S. Const. Amend. 5; D.C. Code 1981, § 24-206(a). *Noble v. United States Parole Comm'n*, 194 F.3d 152, 1999 U.S. App. LEXIS 29194 (C.A.D.C. 1999).

Fact that petitioner had not been released by the time of his maximum release date was not a basis for concluding that he was being unlawfully held by the parole board in violation of his rights to due process where, as a parole violator during term of his original sentence, he was required to return to incarceration to serve balance of sentence and lost time which he spent on parole before violation, practical effect of which was to extend ultimate release date. D.C. Code § 24-206; 18 U.S.C. §§ 4205, 4207. *Arrington v. McGruder*, 490 F.2d 795, 1974 U.S. App. LEXIS 10398 (C.A.D.C. 1974).

Prisoner was not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. D.C. Code 1961, §§ 24-205, 24-206; 18 U.S.C. §§ 4161, 4162, 4205, 4207. *Howerton v. Rivers*, 326 F.2d 653, 1963 U.S. App. LEXIS 3633 (C.A.D.C. 1963).

Prisoner was not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. D.C. Code 1961, § 24-206; 18 U.S.C. § 4205. *Bates v. Rivers*, 323 F.2d 311, 1963 U.S. App. LEXIS 4380 (C.A.D.C. 1963).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of*

Columbia, 191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

Defendant was not entitled to any street-time credit for time spent on parole in his sentencing under District of Columbia law, where defendant's parole was revoked, and District of Columbia law specifically provided that time on parole was not to be taken into account to diminish time for which defendant was sentenced. *McFadden v. United States Parole Comm'n*, 741 F.Supp.2d 61, 2010 U.S. Dist. LEXIS 101392 (2010), dismissed by 2010 U.S. Dist. LEXIS 126470 (D.D.C. Dec. 1, 2010).

United States Parole Commission's inclusion of defendant's time served in prison in calculation of forfeited time during revocation of parole proceedings after defendant was arrested for attempted use of fraudulent credit card while on parole was not an unlawful sentence; regulation provided that parolee whose parole was revoked would receive no credit toward his sentence for time spent on parole, including time spent in confinement, and defendant was under commission's parole supervision when he was arrested. *Horton v. U.S. Parole Comm'n*, 656 F.Supp.2d 111, 2009 U.S. Dist. LEXIS 86197 (2009).

Prison sentences of habeas petitioner, who had received consecutive sentences for various crimes during a more than 20-year period for his initial crimes and for crimes committed while on parole and while he was a fugitive following escape from prison, had not expired, and, thus, petitioner was not being detained illegally; under District of Columbia law, days petitioner spent on parole that was eventually revoked, as well as days spent as an escapee, did not count toward the fulfillment of his sentences, and Bureau of Prisons (BOP) had correctly calculated petitioner's term of imprisonment. *Crum v. United States*, 672 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 126665 (2009).

Under District of Columbia law, federal inmate forfeited any credit for time spent on parole each of the eight times his parole was revoked, and thus he was not serving an expired sentence at time he filed his petition for a writ of habeas corpus and was not entitled to relief on such basis. *Dews v. Waldern*, 590 F.Supp.2d 42, 2008 U.S. Dist. LEXIS 98471 (2008).

Under District of Columbia law, habeas corpus petitioner did not have a constitutional or statutory right to restoration of street time after parole was revoked, and thus current custody on parole violator warrant was not unlawful. *Hoke v. Waldern*, 587 F.Supp.2d 239, 2008 U.S. Dist. LEXIS 96471 (2008).

Under District of Columbia law, upon each parole revocation, a petitioner's sentence is not increased, but rather, the United States Parole Commission rescinds credit towards completion of that sentence for time spent on parole. *Hoke v. Waldern*, 587 F.Supp.2d 239, 2008 U.S. Dist. LEXIS 96471 (2008).

Under District of Columbia law, period of time during which prisoner, whose grant of parole had been revoked on several occasions, was on parole did not diminish length of his sentence when he was reincarcerated for parole violations. *Johnson v. D.C. Det. Ctr.*, 532 F.Supp.2d 4, 2008 U.S. Dist. LEXIS 5593 (2008).

Upon revocation of parole, District of Columbia law requires rescission of credit earned while on parole. *Leach v. United States Parole Comm'n*, 522 F.Supp.2d 250, 2007 U.S. Dist. LEXIS 87435 (2007).

Parolee, whose parole had been revoked, was subject to retroactive application of United States Parole Commission v. Noble which applied District of Columbia (D.C.) statute providing that time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced if a prisoner's parole is revoked; since parolee was always under federal supervision, and since United States Parole Commission (USPC) consistently followed D.C. statute providing that time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced if a prisoner's parole is revoked, parolee had no legitimate expectation of an earlier release date based on D.C. statute providing for street time credit, which was followed by D.C. parole authorities. D.C. Code 1981, §§ 24-206(a), 24-431. *Noble v. United States Parole Comm'n*, 32 F.Supp.2d 11, 1998 U.S. Dist. LEXIS 20529 (1998), affirmed by 194 F.3d 152, 338 U.S. App. D.C. 362, 1999 U.S. App. LEXIS 29194 (1999).

Parolee was entitled to credit against aggregate federal/local sentence, pursuant to the District of Columbia Good Time Credits Act, for time served on parole for his District of Columbia sentence. D.C. Code 1981, § 24-431(a). *Noble v. United States Parole Comm'n*, 887 F. Supp. 11, 1995 U.S. Dist. LEXIS 7704 (1995).

Rule of lenity did not apply to permit credit for time served on parole after parole was revoked where there was no ambiguity between statutes and it was clear that statute providing for credit for time served on parole did not impliedly repeal statute of more specific application prohibiting credit for parole time if parole was later revoked. D.C. Code 1981, §§ 24-206(a), 24-431(a). *United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1997 D.C. App. LEXIS 73 (1997).

§ 24-407. Repeal of inconsistent laws; savings provision.

All acts or parts of acts inconsistent with the provisions of §§ 22-2601, 24-401 [repealed], 24-402 [repealed], 24-403 to 24-409, and 24-201.26 are hereby repealed; provided, however, that for any felony committed before July 15, 1932, the penalty, sentence, or forfeiture provided by law for such felony at the time such felony was committed shall remain in full force and effect and shall be imposed, notwithstanding said sections.

(July 15, 1932, 47 Stat. 698, ch. 492, § 7.)

Prior Codifications. — 1981 Ed., § 24-207.
1973 Ed., § 24-207.

References in text. — Sections 24-401 and

24-402, referred to in this section, were repealed by the Act of July 17, 1947, 61 Stat. 379, ch. 263, § 7.

§ 24-408. Prisoners who may be paroled.

(a) The power of the Board of Parole shall extend to all prisoners whose sentences exceed 180 days regardless of the nature of the offense; provided, that in the case of a prisoner convicted of an offense other than a felony, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, the prisoner may not be paroled until he has served one-third of the sentence imposed, and in the case of 2 or more sentences for other than a felony, no parole may be granted until after the prisoner has served one-third of the aggregate sentences imposed.

(a-1) Notwithstanding any other provision of law, subsection (a) of this section shall not apply to any offense committed on or after August 5, 2000.

(b) A person convicted of a crime of violence as defined by § 22-4501, shall not be paroled prior to serving 85% of the minimum sentence imposed; provided, that any mandatory minimum sentence shall be served in its entirety.

(July 15, 1932, 47 Stat. 698, ch. 492, § 9; June 6, 1940, 54 Stat. 242, ch. 254, § 7(a); July 17, 1947, 61 Stat. 379, ch. 263, § 6; Aug. 20, 1994, D.C. Law 10-151, § 801, 41 DCR 2608; June 8, 2001, D.C. Law 13-302, § 8(c), 47 DCR 7249.)

Section references. — This section is referred to in §§ 24-407 and 24-463.

Prior Codifications. — 1981 Ed., § 24-208.
1973 Ed., § 24-208.

Effect of amendments. — D.C. Law 13-302 added subsec. (a-1).

Emergency legislation. — For temporary amendment of section, see § 801 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary (90-day) amendment of section, see § 8(c) of the Sentencing Reform Emergency Amendment Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271).

For temporary (90 day) amendment of sec-

tion, see § 8(c) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 8(c) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 8(c) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

Legislative history of Law 10-151. — Law 10-151, the "Omnibus Criminal Justice Reform

Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it

was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Legislative history of Law 13-302. — For Law 13-302, see notes following § 24-403.01.

CASE NOTES

ANALYSIS

Construction and application.
Eligibility for parole.
Powers of board.

Construction and application.

The statutes regarding powers of federal board of parole and District of Columbia Board of Indeterminate Sentence and Parole indicates congressional intent to provide a uniform administration of federal and district laws with respect to the control of released prisoners. 18 U.S.C. §§ 710, 715-716b; D.C. Code 1940, §§ 24-201, 24-208. *Gould v. Green*, 141 F.2d 533, 1944 U.S. App. LEXIS 3734 (1944).

Under statute creating District of Columbia Board of Indeterminate Sentence and Parole and providing for transfer of powers from federal board of parole to district board upon appointment of members of district board, receives such powers over prisoners confined in penal institutions of district as existed in federal board of parole on date of appointment of members of district board, and not merely powers which existed in federal board of parole at time district act became effective. D.C. Code 1940, § 24-208. *Gould v. Green*, 141 F.2d 533, 1944 U.S. App. LEXIS 3734 (1944).

Eligibility for parole.

District of Columbia law creates no due process liberty interest in a parole eligibility date, much less one within sixty days of incarceration, since misdemeanants must serve one-third of their aggregate sentences before being considered for parole. U.S.C. Const.Amends. 5, 14; D.C. Code 1981, § 24-208(a). *Anyanwutaku v. Moore*, 151 F.3d 1053, 1998 U.S. App. LEXIS 16920 (C.A.D.C. 1998).

Powers of board.

The District of Columbia Board of Indetermi-

nate Sentence and Parole has authority to impose conditions or to exercise supervision over prisoners convicted in the District of Columbia and thereafter released because of good conduct allowance. 18 U.S.C. §§ 3568, 4161, 4164, 4201, 4203, 4204; D.C. Code 1940, §§ 24-204, 24-208. *In re Reed*, 158 F.2d 323, 1946 U.S. App. LEXIS 2385 (1946).

Under act creating District of Columbia Board of Indeterminate Sentence and Parole and providing for transfer of powers from federal board of parole over prisoners confined in penal institutions in District of Columbia to district board upon appointment of members of district board, authority of district board was not limited to prisoners thereafter convicted. D.C. Code 1940, § 24-208. *Gould v. Green*, 141 F.2d 533, 1944 U.S. App. LEXIS 3734 (1944).

District of Columbia Board of Indeterminate Sentence and Parole had power to impose conditions upon release of prisoner who had served full time of sentence with deductions for good conduct and in event of violation of conditions to recommit him to serve out balance of his term. 18 U.S.C. §§ 4161, 4164, 4201, 4203, 4204; D.C. Code 1940, §§ 24-201, 24-208. *Gould v. Green*, 141 F.2d 533, 1944 U.S. App. LEXIS 3734 (1944).

The power of United States Board of Parole to impose conditions on release on account of deductions for good conduct of United States prisoners passed from United States Board of Parole to district board of penal institutions by statute with respect to United States prisoners in penal institutions of the District of Columbia. 18 U.S.C. §§ 4161, 4164, 4201; D.C. Code 1940, §§ 24-201 to 24-208, 24-209. *Ex parte Gould*, 51 F.Supp. 354, 1943 U.S. Dist. LEXIS 2379 (D.D.C.1943).

§ 24-409. Federal Parole Board.

The Board of Parole created by § 723a [repealed] of Title 18, United States Code, shall have and exercise the same power and authority over prisoners convicted in the District of Columbia of crimes against the United States or now or hereafter confined in any United States penitentiary or prison (other than the penal institutions of the District of Columbia) as is vested in the District Board of Parole over prisoners confined in the penal institutions of the District of Columbia.

(July 15, 1932, ch. 492, § 10; June 5, 1934, 48 Stat. 880, ch. 391.)

Section references. — This section is referred to in § 24-407.

Prior Codifications. — 1981 Ed., § 24-209. 1973 Ed., § 24-209.

References in text. — Section 723a of Title 18, U.S. Code, referred to in this section, was

repealed by the Act of June 25, 1948, 62 Stat. 862, Ch. 645, § 21.

The Board of Indeterminate Sentence and Parole was replaced by the Board of Parole pursuant to the Act of July 17, 1947, 61 Stat. 378, Ch. 263.

CASE NOTES

ANALYSIS

Construction and application.

Hearings.

Jurisdiction.

Parole standards.

Sentences.

Construction and application.

Congress intended to provide uniform administration of federal and District of Columbia law with respect to control of released prisoners. 18 U.S.C. §§ 4161-4166; D.C. Code 1951, §§ 24-204, 24-206, 24-209, 24-401, 24-402, 24-405. *Johnson v. Ward*, 278 F.2d 245, 1960 U.S. App. LEXIS 5064 (C.A.D.C. 1960).

The term "prisoners confined in", as used in statute transferring power over prisoners confined in penal institutions of District of Columbia from United States Board of Parole to the district board of penal institutions, is used to designate group of persons by institutions rather than to delimit powers of district board to such persons only while they are in confinement. D.C. Code 1940, § 24-209. *Ex parte Gould*, 51 F.Supp. 354, 1943 U.S. Dist. LEXIS 2379 (D.D.C.1943).

Hearings.

Decision by the United States Parole Commission to disregard a parole hearing originally set by the District of Columbia Board of Parole, prior to transfer into federal system of person convicted in the District of Columbia, was fully within the Commission's power once the inmate fell within the Commission's jurisdiction. D.C. Code 1981, §§ 24-209, 24-425. *Morgan v. District of Columbia*, 618 F. Supp. 754, 1985 U.S. Dist. LEXIS 16643 (1985).

Federal prisoner had right to prompt parole revocation hearing on parole revocation detainer warrant lodged against him while he was serving ten-year term in federal penitentiary, and parole board could not wait until prisoner's current sentence had been served before holding hearing or revoking parole. D.C. Code §§ 24-206, 24-209; 18 U.S.C. § 4207; U.S. Const. Amend. 5. *Sutherland v. District of Columbia Board of Parole*, 366 F. Supp. 270, 1973 U.S. Dist. LEXIS 11124 (1973).

Jurisdiction.

Where petitioner was released from District

of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of Columbia*, 191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

The United States Parole Commission has jurisdiction over prisoners convicted in the District of Columbia and transferred to a federal institution and has the same authority and power over such violators as has the District of Columbia Board of Parole over similarly convicted individuals within the District of Columbia's penal facilities. D.C. Code 1981, § 24-209. *Morgan v. District of Columbia*, 618 F. Supp. 754, 1985 U.S. Dist. LEXIS 16643 (1985).

The power of United States Board of Parole to impose conditions on release on account of deductions for good conduct of United States prisoners passed from United States Board of Parole to district board of penal institutions by statute with respect to United States prisoners in penal institutions of the District of Columbia. 18 U.S.C. §§ 4161, 4164, 4201; D.C. Code 1940, §§ 24-201 to 24-208, 24-209. *Ex parte Gould*, 51 F.Supp. 354, 1943 U.S. Dist. LEXIS 2379 (D.D.C.1943).

The United States Board of Parole, and not the district board for penal institutions, has jurisdiction over prisoners convicted in District of Columbia and transferred to some federal institution other than penal institutions of the district. 18 U.S.C. § 4201; D.C. Code 1940, § 24-209. *Ex parte Gould*, 51 F.Supp. 354, 1943 U.S. Dist. LEXIS 2379 (D.D.C.1943).

While District of Columbia authorities supervise prisoners who are confined to District of Columbia correctional facilities, the United States Parole Commission supervises parole of District of Columbia offenders housed at federal facilities. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Shift of jurisdiction over parolee from federal law to district law pursuant to district's court

reorganization did not increase severity of his punishment after punishment was imposed and thus did not amount to constitutionally prohibited ex post facto law, since parolee was no worse off when he was paroled than he was at time of his conviction. D.C. Code 1981, §§ 11-502(2)(A)(v), 22-2405, 24-209; Court Reform and Criminal Procedure Act of 1970, § 101 et seq., 84 Stat. 473; 18 U.S.C. (1970 Ed.) § 4208(d). *Allen v. District of Columbia Hackers' License Appeal Bd.*, 471 A.2d 271, 1984 D.C. App. LEXIS 305 (1984).

Parole standards.

In action by male District of Columbia Code offenders assigned to federal prisons, challenging application of revised federal parole guidelines to decisions on their parole, issues of material fact existed as to whether federal and D.C. parole suitability standards were in fact different, and as to what, if any, legitimate governmental standards would be served by application of federal parole standards to D.C. Code offenders in federal custody as opposed to women offenders or D.C. Code offenders in local custody, precluding summary judgment. Fed.Rules Civ.Proc. Rule 56, 18 U.S.C.; D.C. Code 1981, § 24-209. *Cosgrove v. Smith*, 697 F.2d 1125, 1983 U.S. App. LEXIS 27643 (C.A.D.C. 1983).

United States Parole Commission was required to apply District of Columbia parole regulations and guidelines, rather than federal suitability guidelines, in making parole determinations for male District of Columbia Code offenders housed in federal prisons. D.C. Code 1981, § 24-209. *Cosgrove v. Thornburgh*, 703 F. Supp. 995, 1988 U.S. Dist. LEXIS 16460 (1988).

United States Parole Commission was required to determine parole eligibility and suitability of federal inmate convicted of violations of the District of Columbia Code under District of Columbia, rather than federal, standards. D.C. Code 1981, § 24-209. *Thomas v. United States Parole Com.*, 672 F. Supp. 256, 1987 U.S. Dist. LEXIS 9981 (1987).

Sentences.

Refusal of United States Parole Commission, in sentencing prisoner upon parole revocation, to credit prisoner with time spent on parole,

under governing District of Columbia statute, did not violate prisoner's right to equal protection, although prisoners in custody of District of Columbia Department of Corrections were given credit for such time pursuant to misapplication of statute, as prisoner was not similarly situated to prisoners who were not in federal custody, and difficulty of rearresting inmates who were already released would provide rational basis for the disparate treatment. U.S. Const.Amend. 5; D.C. Code 1981, § 24-206(a). *Noble v. United States Parole Comm'n*, 194 F.3d 152, 1999 U.S. App. LEXIS 29194 (C.A.D.C. 1999).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of Columbia*, 191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. D.C. Code 1940, §§ 24-201(b), 24-206, 24-209. *Noll v. Board of Parole for Government of District of Columbia*, 191 F.2d 653, 1951 U.S. App. LEXIS 2595 (C.A.D.C. 1951).

Statutory ten-year ceiling on term to be served on federal sentences before being eligible for parole did not apply to prisoner incarcerated in federal prison for consecutive federal and District Columbia sentences, and thus the Federal Bureau of Prisons correctly aggregated District of Columbia minimum sentence and minimum sentence for one of the two federal convictions for a total of 18 years and four months before prisoner would be eligible for parole. 18 U.S.C. § 4205(a, h); D.C. Code 1981, §§ 24-203 to 24-209. *Chatman-Bey v. Smith*, 594 F. Supp. 718, 1984 U.S. Dist. LEXIS 22909 (1984), dismissed by 597 F. Supp. 509, 1984 U.S. Dist. LEXIS 21440 (D.D.C. 1984).

Subchapter II. Interstate Parole and Probation Compact.

§ 24-451. Authority of Mayor to execute Interstate Parole and Probation Compact.

The Mayor of the District of Columbia is hereby authorized to execute a compact on behalf of the District of Columbia with any of the states legally joining therein in the form substantially as set out in this section.

INTERSTATE PAROLE AND PROBATION COMPACT

The Contracting States Solemnly Agree That:

(1) It shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person's being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person. A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) Each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) Duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such a state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) The duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) The Governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) This compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

(Mar. 12, 1976, D.C. Law 1-51, § 2, 22 DCR 5296.)

Prior Codifications. — 1981 Ed., § 24-251. 1973 Ed., § 24-251.

Legislative history of Law 1-51. — Law 1-51, the "Interstate Parole and Probation Compact Act," was introduced in Council and assigned Bill No. 1-91, which was referred to the Committee on Public Safety. The Bill was

adopted on first and second readings on November 4, 1975 and November 18, 1975, respectively. Signed by the Mayor on December 4, 1975, it was assigned Act No. 1-71 and transmitted to both Houses of Congress for its review.

CASE NOTES

Misdemeanors.

In limited circumstance when misdemeanor probationer's supervision is transferred to receiving state under Interstate Parole and Probation Compact, the Superior Court's arguably geographically limited authority for issuance of a misdemeanor warrant under § 23-563(b) is irrelevant; insofar as the warrant is signed

without territorial limitation directed to the United States Marshal, it constitutes a direction to an officer of this court to "apprehend and retake" a probationer under paragraph (3) of this section and must accordingly be so honored. *United States v. Hanna*, 114 WLR 1153 (Super. Ct. 1986).

§ 24-452. Definitions.

As used in this subchapter, the term "state" means any of the several states of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia, and the term "Governor" means the chief executive officer of any such jurisdiction.

(Mar. 12, 1976, D.C. Law 1-51, § 3, 22 DCR 5299.)

Prior Codifications. — 1981 Ed., § 24-252. 1973 Ed., § 24-252.

Legislative history of Law 1-51. — For

legislative history of D.C. Law 1-51, see Historical and Statutory Notes following § 24-451.

§ 24-453. Severability.

If any section or provision of this subchapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections or provisions of this subchapter.

(Mar. 12, 1976, D.C. Law 1-51, § 4, 22 DCR 5299.)

Prior Codifications. — 1981 Ed., § 24-253. 1973 Ed., § 24-253.

Legislative history of Law 1-51. — For

legislative history of D.C. Law 1-51, see Historical and Statutory Notes following § 24-451.

Subchapter III. Medical and Geriatric Parole.

§ 24-461. Definitions.

For the purposes of this subchapter, the term:

(1) "Geriatric inmate" means a person 65 years of age or older convicted of a violation of a District of Columbia criminal law by a court in the District of Columbia, who suffers from a chronic infirmity, illness, or disease related to aging, and poses a low risk to the community;

(2) "Permanently incapacitated inmate" means a person convicted of a violation of a District of Columbia criminal law by a court in the District of Columbia and who, by reason of an existing physical or medical condition which is not terminal, is permanently and irreversibly physically incapacitated, and who does not constitute a danger to himself or to society; and

(3) "Terminally ill inmate" means a person convicted of a violation of the District of Columbia criminal law by a court in the District of Columbia who has an incurable condition caused by illness or disease which would, within reasonable medical judgment, produce death within 6 months and does not constitute a danger to himself or to society.

(May 15, 1993, D.C. Law 9-271, § 2, 40 DCR 792; June 3, 1997, D.C. Law 11-275, § 16, 44 DCR 1408.)

Section references. — This section is referred to in § 24-462.

Prior Codifications. — 1981 Ed., § 24-261.
1981 Ed., § 24-261.

Legislative history of Law 9-271. — Law 9-271, the "Medical and Geriatric Parole Act of 1992," was introduced in Council and assigned Bill No. 9-557 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-400 and transmitted to both Houses of Congress for its review. D.C. Law 9-271 became effective on May 15, 1993.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

§ 24-462. Conditions present at time of sentencing excluded.

No physical or medical condition set forth in § 24-461 which existed at the time of sentencing shall provide the basis for geriatric or medical parole under this subchapter.

(May 15, 1993, D.C. Law 9-271, § 3, 40 DCR 792.)

Prior Codifications. — 1981 Ed., § 24-262.
Legislative history of Law 9-271. — For

legislative history of D.C. Law 9-271, see Historical and Statutory Notes following § 24-461.

§ 24-463. Board of Parole authority.

(a) The Board of Parole (“Board”) shall establish a medical and geriatric parole program to be administered by the Department of Corrections (“Department”). The authority to grant medical or geriatric parole shall rest solely with the Board. The Department shall determine for each person considered for geriatric or medical parole, whether the person is a:

- (1) Geriatric inmate;
- (2) Permanently incapacitated inmate; or
- (3) Terminally ill inmate.

(b) Notwithstanding § 24-408, inmates who have not served their minimum sentences shall be considered eligible for parole under this section. Medical and geriatric parole consideration shall be in addition to any other parole for which an inmate may be eligible.

(c) The Board shall determine the appropriate level of supervision and shall develop a comprehensive discharge plan for each inmate released under this subchapter.

(d) In considering an inmate for medical or geriatric parole, the Board may request that additional medical evidence be produced or that additional medical examinations be conducted.

(e) The parole term of an inmate on medical parole shall be for the remainder of the inmate’s sentence, without diminution of sentence for good behavior. In addition to terms and conditions prescribed by the Board, supervision of an inmate on medical or geriatric parole shall also consist of periodic medical evaluations at intervals to be determined by the Board at the time of release.

(f) The chairperson of the Board shall report annually to the Mayor, the Chairpersons of the Council of the District of Columbia, and the Council’s Committee on the Judiciary, the number of applications for medical and geriatric parole, the nature of the illness, disease, or condition of the applicants, the reasons for denial of applications for medical or geriatric parole, the number of persons on medical and geriatric parole who have been returned to the custody of the Department, and the reasons for their return.

(May 15, 1993, D.C. Law 9-271, § 4, 40 DCR 792.)

Prior Codifications. — 1981 Ed., § 24-263.

Legislative history of Law 9-271. — For legislative history of D.C. Law 9-271, see Historical and Statutory Notes following § 24-461.

Editor’s notes. — Board of Parole abolished: Section 11231(a) and (b) of the National

Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 745), transferred the authority of the Board of Parole to the U.S. Parole Commission and abolished the D.C. Board of Parole.

§ 24-464. Medical parole.

(a) The Department shall identify permanently incapacitated and terminally ill inmates for consideration for medical parole based solely on medical documentation. The Department shall forward an application and documentation in support of parole eligibility to the Board within 15 days of receipt of an application. The documentation shall include information concerning the

inmate's medical history and prognosis, institutional behavior and adjustment, and criminal history. The inmate or inmate's representative may submit an application to the Board.

(b) Whenever it shall appear to the Board that because of a medical condition an inmate is permanently incapacitated or terminally ill, and the inmate's parole is not incompatible with the welfare of society, the Board may authorize the inmate's release on medical parole upon terms and conditions as the Board shall from time to time prescribe.

(c) The Board shall make a determination whether to grant medical parole within 15 days of receipt of an application and supporting documentation from the Department.

(May 15, 1993, D.C. Law 9-271, § 5, 40 DCR 792.)

Prior Codifications. — 1981 Ed., § 24-264. legislative history of D.C. Law 9-271, see Historical and Statutory Notes following § 24-461.
Legislative history of Law 9-271. — For

§ 24-465. Conditions for geriatric release.

(a) A geriatric inmate who is 65 years of age or older, has a chronic infirmity, illness, or disease, and who poses a low risk to the community, may be eligible for parole as determined by the Board.

(b) Consideration for geriatric parole shall be initiated by the submission of an application from the Department, the inmate, or the inmate's representative and the Department's supporting documentation to the Board.

(c) In determining eligibility for geriatric release, the Board shall take into consideration the following factors:

- (1) Age of inmate;
- (2) Severity of illness, disease, or infirmities;
- (3) Comprehensive health evaluation;
- (4) Institutional behavior;
- (5) Level of risk for violence;
- (6) Criminal history; and

(7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings.

(d) The Department shall submit an application for geriatric release with supporting documentation to the Board within 30 days of receipt of an application.

(e) The Board shall make a determination whether to grant geriatric parole within 30 days of receipt of the application and supporting documentation from the Department.

(May 15, 1993, D.C. Law 9-271, § 6, 40 DCR 792.)

Prior Codifications. — 1981 Ed., § 24-265. legislative history of D.C. Law 9-271, see Historical and Statutory Notes following § 24-461.
Legislative history of Law 9-271. — For

§ 24-466. Eligibility for public assistance.

(a) When a person has been granted either medical or geriatric parole and

applies for public assistance, including medical assistance, the Department shall forward the application for assistance to the Department of Human Services, and advise the Board that an application for assistance has been made.

(b) The Department of Human Services shall, within 60 days of receipt of a medical or geriatric parolee's application for assistance, determine the eligibility of the person for general assistance, public assistance, Medicaid, or any other District or federal medical assistance program.

(c) Repealed.

(d) Notwithstanding any other law, when a person is released on medical or geriatric parole and is in need of public assistance, including medical assistance, the Department of Human Services shall be responsible for the administrative costs of the initial and any subsequent eligibility determination and the costs of any public assistance, including medical assistance, following a person's release on medical or geriatric parole for so long as the person is eligible.

(May 15, 1993, D.C. Law 9-271, § 7, 40 DCR 792; Mar. 20, 1998, D.C. Law 12-60, § 704, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 24-266.
1981 Ed., § 24-266.

Temporary Amendment of Section. — Section 5 of D.C. Law 12-21 deleted "general or" preceding "public" in (a); and repealed (c).

Section 8(b) of D.C. Law 12-21 provided that the act shall expire on the 225th day of its having taken effect.

Section 704 of D.C. Law 12-59 deleted "general or" preceding "public" in (a); and repealed (c).

Section 2001(b) of D.C. Law 12-59 provided the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency legislation. — For temporary amendment of section, see § 5 of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 704 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 704 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 9-271. — For legislative history of D.C. Law 9-271, see Historical and Statutory Notes following § 24-461.

Legislative history of Law 12-21. — Law 12-21, the "General Assistance Program Termination Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-169. The Bill was adopted on first and second readings on May 6, 1997, and June 3, 1997, respectively. Signed by the Mayor on June 18, 1997, it was assigned Act No. 12-98 and transmitted to both Houses of Congress for its review. D.C. Law 12-21 became effective on September 23, 1997.

Legislative history of Law 12-59. — Law 12-59, the "Fiscal Year 1998 Revised Budget Support Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 24-467. Exceptions.

Persons convicted of first degree murder or persons sentenced for crimes committed when armed under § 22-4502, or under § 22-4504(b), and § 22-2803, shall not be eligible for geriatric or medical parole.

(May 15, 1993, D.C. Law 9-271, § 8, 40 DCR 792; Feb. 5, 1994, D.C. Law 10-68, § 57, 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 18, 41 DCR 5193; May 25, 1995, D.C. Law 10-258, § 2, 42 DCR 238.)

Prior Codifications. — 1981 Ed., § 24-267.

Legislative history of Law 9-271. — For legislative history of D.C. Law 9-271, see Historical and Statutory Notes following § 24-461.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 10-258. — Law 10-258, the “District of Columbia Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-617, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-392 and transmitted to both Houses of Congress for its review. D.C. Law 10-258 became effective May 25, 1995.

§ 24-468. Medical and geriatric reduction of sentence.

(a) Upon a motion by the Director of the Federal Bureau of Prisons, the court may reduce the sentence of any person convicted of a felony under the District of Columbia Official Code committed on or after August 5, 2000, and sentenced to a determinate term of imprisonment which is not subject to parole, and shall impose an adequate period of supervision to follow release, based upon a finding that:

(1) The inmate is permanently incapacitated or terminally ill because of a medical condition which was not known to the court at the time of sentencing, and the release of the inmate under supervision is not incompatible with public safety; or

(2) The inmate is 65 years or older and has a chronic infirmity, illness, or disease related to aging, and the release of the inmate under supervision is not incompatible with public safety.

(b) The court shall act expeditiously on any motion submitted by the Director of the Federal Bureau of Prisons. If the court receives a request directly from an inmate or a representative of an inmate, the court may refer the matter to the Federal Bureau of Prisons for a motion or a statement of reasons as to why a motion will not be filed.

(May 15, 1993, D.C. Law 9-271, § 8a, as added Oct. 10, 1998, D.C. Law 12-165, § 5, 45 DCR 2980.)

Prior Codifications. — 1981 Ed., § 24-268.

Legislative history of Law 12-165. — For legislative history of D.C. Law 12-165, see His-

torical and Statutory Notes following § 24-403.01.

CHAPTER 5. INSANE DEFENDANTS.

Sec.

24-501. Acquittal by reason of insanity; release after confinement; expenses of confinement; inconsistent statutes superseded; escaped persons; insanity defense; motions for relief.

Sec.

24-502. Commitment while serving sentence.
24-503. Restoration to sanity.

§ 24-501. Acquittal by reason of insanity; release after confinement; expenses of confinement; inconsistent statutes superseded; escaped persons; insanity defense; motions for relief.

(a) Repealed.

(a-1) Repealed.

(b) Repealed.

(c) When any person tried upon an indictment or information for an offense, or tried in the Family Division of the Superior Court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(d)(1) If any person tried upon an indictment or information for an offense raises the defense of insanity and is acquitted solely on the ground that he was insane at the time of its commission, he shall be committed to a hospital for the mentally ill until such time as he is eligible for release pursuant to this subsection or subsection (e) of this section.

(2)(A) A person confined pursuant to paragraph (1) of this subsection shall have a hearing, unless waived, within 50 days of his confinement to determine whether he is entitled to release from custody. At the conclusion of the criminal action referred to in paragraph (1) of this subsection, the court shall provide such person with representation by counsel:

(i) In the case of a person who is eligible to have counsel appointed by the court, by continuing any appointment of counsel made to represent such person in the prior criminal action or by appointing new counsel; or

(ii) In the case of a person who is not eligible to have counsel appointed by the court, by assuring representation by retained counsel.

(B) If the hearing is not waived, the court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney and hold the hearing. Within 10 days from the date the hearing was begun, the court shall determine the issues and make findings of fact and conclusions of law with respect thereto. The person confined shall have the burden of proof. If the court finds by a preponderance of the evidence that the person confined is entitled to his release from custody, either conditional or unconditional, the court shall enter such order as may appear appropriate.

(3) An appeal may be taken from an order entered upon paragraph (2) of this subsection to the court having jurisdiction to review final judgments of the court entering the order.

(e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such

hospital certifies: (1) that such person has recovered his sanity; (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others; and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of 15 days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of 1 or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) of this section is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of 15 days from the time such certificate is filed and served pursuant to this section; provided, that the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

(f)(1) Except as provided in paragraph (2) of this subsection, when an accused person is acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, the person and the person's estate shall be charged with the expense of the person's support in the hospital.

(2) The District shall not charge a person or his estate for the expense of the person's support in a hospital for the mentally ill if the source of the funds being sought to compensate the District were obtained as a result of:

(A) A judgment against the District pertaining to its care of the person;
or

(B) A settlement reached by the District with a person or his estate pertaining to its care of the person.

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia

the provisions of any federal statutes or parts thereof inconsistent with this section.

(i) When a person has been ordered confined in a hospital for the mentally ill pursuant to this section and has escaped from such hospital, the court which ordered confinement shall, upon request of the government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital.

(j) Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty, or within 15 days thereafter, or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense. No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence.

(k)(1) A person in custody or conditionally released from custody, pursuant to the provisions of this section, claiming the right to be released from custody, the right to any change in the conditions of his release, or other relief concerning his custody, may move the court having jurisdiction to order his release, to release him from custody, to change the conditions of his release, or to grant other relief.

(2) A motion for relief may be made at any time after a hearing has been held or waived pursuant to subsection (d)(2) of this section.

(3) Unless the motion and the files and records of the case conclusively show that the person is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. On all issues raised by his motion, the person shall have the burden of proof. If the court finds by a preponderance of the evidence that the person is entitled to his release from custody, either conditional or unconditional, a change in the conditions of his release, or other relief, the court shall enter such order as may appear appropriate.

(4) A court may entertain and determine the motion without requiring the production of the persons at the hearing.

(5) A court shall not be required to entertain a second or successive motion for relief under this section more often than once every 6 months. A court for good cause shown may in its discretion entertain such a motion more often than once every 6 months.

(6) An appeal may be taken from an order entered under this section to the court having jurisdiction to review final judgments of the court entering the order.

(7) An application for habeas corpus on behalf of a person who is authorized to apply for relief by motion pursuant to this section shall not be

entertained if it appears that the applicant has failed to apply for relief, by motion, to the court having jurisdiction to entertain a motion pursuant to this section, unless it also appears that the remedy by motion is inadequate or ineffective to test the validity of his detention.

(Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 927; Apr. 14, 1906, 34 Stat. 113, ch. 1624; July 2, 1945, 59 Stat. 311, ch. 217; Aug. 9, 1955, 69 Stat. 609, ch. 673, § 1; Dec. 27, 1967, 81 Stat. 735, Pub. L. 90-226, title II, § 201; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, §§ 155(a), 159(e), title II, § 207; May 7, 2005, D.C. Law 15-355, § 2, 51 DCR 10547; May 24, 2005, D.C. Law 15-358, § 201, 52 DCR 2015; May 1, 2008, D.C. Law 17-150, § 2, 55 DCR 1459.)

Section references. — This section is referred to in §§ 2-1602, 16-2307, and 24-503.

Prior Codifications. — 1981 Ed., § 24-301. 1973 Ed., § 24-301.

Effect of amendments. — D.C. Law 15-355 added subsec. (a-1).

D.C. Law 15-358 repealed subsecs. (a), (a-1), and (b) which had read as follows:

“(a) If it appears to a court having jurisdiction of: (1) a person arrested, or indicted for, or charged by information with, an offense; or (2) a child subject to a transfer motion in the Family Division of the Superior Court of the District of Columbia pursuant to § 16-2307, that, from the court’s own observations or from prima facie evidence submitted to it and prior to the imposition of sentence, the expiration of any period of probation, or the hearing on the transfer motion, as the case may be, such person or child (hereafter in this subsection and subsection (b) of this section referred to as the “accused”) is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the government objects, in which event the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial or to participate in transfer proceedings. If the court shall find the accused to be then of un-

sound mind or mentally incompetent to stand trial or to participate in transfer proceedings, the court shall order the accused confined to a hospital for the mentally ill.

“(a-1)(1) If the court determines after a hearing, or pursuant to a report of the superintendent of the hospital to which neither party objects, that the accused person is mentally incompetent to stand trial or to participate in transfer proceedings, and not likely to regain such competence in the reasonable future, and, if after a petition has been filed pursuant to § 21-541, the court further determines that the person shall be released from further detention in the criminal or transfer proceeding, the court shall remand the person to the hospital and the hospital may detain the person pending a hearing on the petition conducted pursuant to § 21-542. Within 7 days of the remand order, a person so detained may request a probable cause hearing before the Family Court of the Superior Court of the District of Columbia under § 21-525 on the person’s continued hospitalization, in which case a hearing shall be held within 24 hours after the receipt of the request.

“(2) If the court determines that the accused person shall be released from further detention in the criminal or transfer proceeding, but a petition has not been filed pursuant to D.C. Official Code § 21-541, the court may stay the person’s release for a period not to exceed 48 hours and remand the person to the hospital for the period of the stay so that the superintendent of the hospital may have an opportunity to initiate proceedings for the person’s hospitalization under subchapter III of Chapter 5 of Title 21.

“(b) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to

be competent to stand trial or to participate in transfer proceedings, unless the accused or the government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial or to participate in transfer proceedings."

D.C. Law 17-150 rewrote subsec. (f), which had read as follows: "(f) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital."

Temporary Amendment of Section. — Section 2 of D.C. Law 14-311 amended the section by adding subsec. (a-1) to read as follows:

"(a-1)(1) If the court determines after a hearing, or pursuant to a report of the superintendent of the hospital to which neither party objects, that the accused person is mentally incompetent to stand trial or to participate in transfer proceedings, and not likely to regain such competence in the reasonable future, and, if after a petition has been filed pursuant to D.C. Official Code § 21-541, the court further determines that the person shall be released from further detention in the criminal or transfer proceeding, the court shall remand the person to the hospital and the hospital may detain the person pending a hearing on the petition conducted pursuant to D.C. Official Code § 21-542. Within 7 days of the remand order, a person so detained may request a probable cause hearing before the Family Court of the Superior Court of the District of Columbia under D.C. Official Code § 21-525 on the person's continued hospitalization, in which case a hearing shall be held within 24 hours after the receipt of the request.

"(2) If the court determines that the accused person shall be released from further detention in the criminal or transfer proceeding, but a petition has not been filed pursuant to D.C. Official Code § 21-541, the court may stay the person's release for a period not to exceed 48 hours and remand the person to the hospital for the period of the stay so that the superintendent of the hospital may have an opportunity to initiate proceedings for the person's hospitalization under subchapter III of Chapter 5 of Title 21 of the District of Columbia Official Code."

Section 4(b) of D.C. Law 14-311 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 15-165 added subsec. (a-1) to read as follows:

"(a-1)(1) If the court determines after a hearing, or pursuant to a report of the superintendent of the hospital to which neither party objects, that the accused person is mentally

incompetent to stand trial or to participate in transfer proceedings, and not likely to regain such competence in the reasonable future, and, if after a petition has been filed pursuant to D.C. Official Code § 21-541, the court further determines that the person shall be released from further detention in the criminal or transfer proceeding, the court shall remand the person to the hospital and the hospital may detain the person pending a hearing on the petition conducted pursuant to D.C. Official Code § 21-542. Within 7 days of the remand order, a person so detained may request a probable cause hearing before the Family Court of the Superior Court of the District of Columbia under D.C. Official Code § 21-525 on the person's continued hospitalization, in which case a hearing shall be held within 24 hours after the receipt of the request.

"(2) If the court determines that the accused person shall be released from further detention in the criminal or transfer proceeding, but a petition has not been filed pursuant to D.C. Official Code § 21-541, the court may stay the person's release for a period not to exceed 48 hours and remand the person to the hospital for the period of the stay so that the superintendent of the hospital may have an opportunity to initiate proceedings for the person's hospitalization under subchapter III of Chapter 5 of Title 21 of the District of Columbia Official Code."

Section 4(b) of D.C. Law 15-165 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Prevention of Premature Release of Mentally Incompetent Defendants Emergency Act of 2002 (D.C. Act 14-611, January 7, 2003, 50 DCR 703).

For temporary (90 day) amendment of section, see § 2 of Prevention of Premature Release of Mentally Incompetent Defendants Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-44, March 24, 2003, 50 DCR 2809).

For temporary (90 day) amendment of section, see § 2 of Prevention of Premature Release of Mentally Incompetent Defendants Emergency Amendment Act of 2003 (D.C. Act 15-289, January 6, 2004, 51 DCR 876).

For temporary (90 day) amendment of section, see § 2 of Prevention of Premature Release of Mentally Incompetent Defendants Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-399, March 18, 2004, 51 DCR 3633).

For temporary (90 day) amendment of section, see § 2 of Prevention of Premature Release of Mentally Incompetent Defendants Emergency Amendment Act of 2004 (D.C. Act 15-647, December 29, 2004, 52 DCR 235).

For temporary (90 day) amendment of section, see § 2 of Prevention of Premature Release of Mentally Incompetent Defendants Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-56, March 17, 2005, 52 DCR 3178).

Legislative history of Law 14-311. — Law 14-311, the “Prevention of Premature Release of Mentally Incompetent Defendants Temporary Amendment Act of 2003”, was introduced in Council and assigned Bill No. 14-1008, and was retained by Council. The Bill was adopted on first and second readings on December 17, 2002, and January 7, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-626 and transmitted to both Houses of Congress for its review. D.C. Law 14-311 became effective on June 12, 2003.

Legislative history of Law 15-165. — Law 15-165, the “Prevention of Premature Release of Mentally Incompetent Defendants Temporary Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-629, and was retained by Council. The Bill was adopted on first and second readings on December 16, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 29, 2004, it was assigned Act No. 15-335 and transmitted to both Houses of Congress for its review. D.C. Law 15-165 became effective on May 21, 2004.

Legislative history of Law 15-355. — Law 15-355, the “Prevention of Premature Release of Mentally Incompetent Defendants Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-665, which was referred to the Committee on Judiciary. The Bill

was adopted on first and second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-566 and transmitted to both Houses of Congress for its review. D.C. Law 15-355 became effective on May 2005.

Legislative history of Law 15-358. — Law 15-358, the “Incompetent Defendants Criminal Commitment Act of 2004”, was introduced in Council and assigned Bill No. 15-967, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-748 and transmitted to both Houses of Congress for its review. D.C. Law 15-358 became effective on May 24, 2005.

Legislative history of Law 17-150. — Law 17-150, the “Frank Harris, Jr. Justice Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-436, which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 24, 2008, it was assigned Act No. 17-261 and transmitted to both Houses of Congress for its review. D.C. Law 17-150 became effective on May 1, 2008.

Editor’s notes. — Transfer of Persons Found Not Guilty by Reason of Insanity: For transfer of certain persons found not guilty by reason of insanity in the District of Columbia, see § 301 of Pub. L. 104-294, 110 Stat. 3489, codified at 18 U.S.C. § 4243.

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In murder prosecution wherein sole defense was insanity, and defendant’s gibberish testimony was such as to raise issues as to whether

defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. U.S. Const. Amend. 5; 18 U.S.C. § 3481; D.C. Code 1951, §§ 22-2401, 22-2404, 24-301. *Stewart v. U.S.*, 81 S.Ct. 941, 1961 U.S. LEXIS 1266 (U.S. Dist. Col. 1961).

Laymen may testify as to "insanity." D.C. Code § 24-301(a). *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Statute to effect that no statement made by accused in course of examination into his sanity or mental competency shall be admitted in evidence against accused on issue of guilt in criminal proceeding is applicable to mental examinations ordered by District of Columbia courts when it appears that accused is of unsound mind or mentally incompetent to understand proceedings against him. D.C. Code 1961, § 24-301(a); 18 U.S.C. § 4244. *Battle v. Cameron*, 260 F. Supp. 804, 1966 U.S. Dist. LEXIS 7358 (D.D.C. 1966).

In prosecution for drunkenness, evidence, which was taken in prior proceeding to determine competency of defendant to stand trial, could not be used to sustain a finding of not guilty by reason of insanity. D.C. Code 1951, § 24-301(a). In re *Williams*, 165 F.Supp. 879, 1958 U.S. Dist. LEXIS 3754 (D.D.C. 1958).

The admission of the "Miranda rights" card, indicating that defendant had read and understood her rights and that she did not wish to answer questions, was constitutional error and was not harmless; appellate court could not conclude beyond a reasonable doubt that the jury still would have rejected defendant's insanity defense had the evidence that she invoked her Miranda rights not been introduced. *McNeil v. United States*, 933 A.2d 354, 2007 D.C. App. LEXIS 584 (2007).

Where the central issue of the trial was defendant's state of mind at the time of the killing, the admission of evidence of defendant's silence when arrested and allowance of the accompanying argument was constitutional error which was not harmless beyond a reasonable doubt, and thus, defendant was entitled to a new trial. *McNeil v. United States*, 933 A.2d 354, 2007 D.C. App. LEXIS 584 (2007).

Record did not support claim that trial court refused to allow defense counsel to ask any questions regarding defendant's state of mind at the time he allegedly committed arson, destruction of property, and child cruelty offenses;

record showed that after defense counsel asked witness questions about defendant's "bizarre behavior" on the day charged offenses allegedly occurred, trial court denied a government motion to prevent defense counsel from cross examining witnesses with leading questions which suggested that the defendant was suffering under any mental defect that day. *Phenis v. United States*, 909 A.2d 138, 2006 D.C. App. LEXIS 539 (2006).

Psychological testimony regarding defendant's state of mind during manslaughter was inadmissible, absent insanity defense. Criminal Rule 12.2. *Smith v. United States*, 686 A.2d 537, 1996 D.C. App. LEXIS 259 (1996), writ of certiorari denied by 522 U.S. 839, 118 S. Ct. 115, 139 L. Ed. 2d 67, 1997 U.S. LEXIS 5021, 66 U.S.L.W. 3257 (1997).

In prosecution for intoxication, trial judge, in determining issue of defendant's competency under District of Columbia law to stand trial, could not use evidence introduced in previous hearing as to defendant's sanity where hearing was held after defendant entered plea of guilty on same charge. D.C. Code 1951, §§ 11-776(b), 24-301(a, b). *Williams v. District of Columbia*, 147 A.2d 773, 1959 D.C. App. LEXIS 222 (Cr.App. 1959).

Appointment of psychiatrists.

When trial court is satisfied that it can, without appointments of additional experts, resolve issue of competence to stand trial, failure to make additional appointments on resolution of issue of competence is not denial of expert assistance for substantive defense of insanity. D.C. Code § 24-301(a); 18 U.S.C. §§ 3006A, 4244. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Judge could not be expected to appoint particular psychiatrist, sought by defendant, in absence of specific showing as to why no other could perform adequately in resolving issue of competence to stand trial. D.C. Code § 24-301(a); 18 U.S.C. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Examinations of defendant by government psychiatrists during 15-day confinement at government hospital and 50-minute examination conducted by psychiatrist by order of the court were not equivalent to the indigent defendant's right to psychiatric services necessary to an adequate defense in his case and it was error for trial court to deny defendant's timely request for psychiatric assistance. D.C. Code § 24-301; 18 U.S.C. § 3006A(e). *United States*

v. Chavis, 486 F.2d 1290, 1973 U.S. App. LEXIS 7351 (C.A.D.C. 1973).

Where defendant had right to ex parte hearing on motion for appointment of psychiatrist to aid the defense and prosecutor twice reversed himself on the adequacy of a psychiatric examination of the defendant by legal psychiatric services psychiatrist, it was improper for trial court to deny the motion because the prosecutor intervened to oppose it. D.C. Code § 24-301; 18 U.S.C. § 3006A(e). *United States v. Chavis*, 486 F.2d 1290, 1973 U.S. App. LEXIS 7351 (C.A.D.C. 1973).

Where there was likelihood that insanity defense might be warranted but the record was not sufficient to establish whether the defendant actually received expert psychiatric assistance sufficient for the preparation of adequate defense of insanity, the case would be remanded for evidentiary hearing on the issue of expert assistance. D.C. Code § 24-301; 18 U.S.C. *United States v. Chavis*, 476 F.2d 1137, 1973 U.S. App. LEXIS 10719 (C.A.D.C. 1973).

Petitioner, who sought release from mental hospital to which he was confined pursuant to commitment following verdict of not guilty of criminal charges by reason of insanity and on whose motion independent psychiatric examination was ordered, was granted full and meaningful habeas corpus hearing without being denied any relevant or other legitimate assistance from government employed psychiatrist and was not entitled to relief on theory that he had not had court-appointed psychiatric assistance to which interests of justice entitled him for preparation and presentation of his habeas corpus case. D.C. Code § 24-301(d, g); U.S. Const. Amend. 14. *Proctor v. Harris*, 413 F.2d 383, 1969 U.S. App. LEXIS 12618 (C.A.D.C. 1969).

As respects claim, on appeal from denial of habeas corpus relief, that petitioner had not had such court-appointed psychiatric assistance to which interests of justice entitled him for the preparation and presentation of his habeas corpus case, Court of Appeals would take judicial notice that over a dozen years or more the medical views of government psychiatrists, as a whole, generally turned out to be more favorable to defendants than to prosecutors in verdicts of not guilty by reason of insanity. D.C. Code § 24-301(d, g); U.S. Const. Amend. 14. *Proctor v. Harris*, 413 F.2d 383, 1969 U.S. App. LEXIS 12618 (C.A.D.C. 1969).

Defendant who was denied pretrial mental examination and thus lacked opportunity to establish basis of insanity defense could not be charged with acquiescing in subsequently appointed counsel's failure to assert defense. D.C. Code 1961, § 24-301(a). *Cannady v. United States*, 351 F.2d 817, 1965 U.S. App. LEXIS 4909 (C.A.D.C. 1965).

On adequate averment, defendant has right to assistance of court in developing basis for his insanity of defense, and such assistance may take form of commitment for mental examination, examination through Mental Health Commission or Legal Psychiatric Service, or appointment of private experts. 18 U.S.C. § 4244; Fed. Rules Crim. Proc. rules 17(b), 28, 18 U.S.C.; D.C. Code 1961, §§ 21-308, 24-106, 24-301(a). *Brown v. United States*, 331 F.2d 822, 1964 U.S. App. LEXIS 5757 (C.A.D.C. 1964).

In a lunacy proceeding, the court sits as a court of equity to determine whether a person is sane or insane and in doing so is, or should be, assisted by administrative officers and experts appropriate to such a court and to such a determination. D.C. Code 1940, §§ 21-306 to 21-308, 21-311, 21-312, 24-301. *Overholser v. Treibly*, 147 F.2d 705, 1945 U.S. App. LEXIS 2191 (1945).

Defendant was not entitled to posttrial appointment of psychological expert and fees to hire investigator to enable him to substantiate claims that trial counsel was ineffective for failing to assert insanity defense, offer expert testimony on self-defense claim, or present expert testimony at sentencing hearing, where defendant had no history of mental illness and showed no indication of mental incompetence at time of crime or trial. U.S. Const. Amend. 6. *Smith v. United States*, 686 A.2d 537, 1996 D.C. App. LEXIS 259 (1996), writ of certiorari denied by 522 U.S. 839, 118 S. Ct. 115, 139 L. Ed. 2d 67, 1997 U.S. LEXIS 5021, 66 U.S.L.W. 3257 (1997).

Court may deny a request for order for defense related services on basis that defendant already had received sufficient psychiatric assistance to prepare his defense, but provision for psychiatric examination of defendant under statute is not dispositive of this inquiry since task of court-appointed psychiatric expert essentially is to provide the court, in a neutral and detached manner, with evaluation of accused's competency to stand trial or of defendant's sanity at time of commission of offense; however, the expert provided to aid in an adequate defense acts as a consultant to the defendant, not to the court his main purpose being to help determine whether there is reasonable basis for an insanity defense. D.C. Code §§ 11-2605(a), 24-301(a). *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

Fact that defendant charged with felony-murder, second-degree murder while armed, second-degree murder, attempted robbery while armed, attempted robbery, and carrying a pistol without a license was examined by court-appointed psychiatrists in order to determine his competency to stand trial and his sanity at time offense was committed did not render examination of defendant by private psychia-

trist unnecessary for purposes of statute governing court order for defense related services. D.C. Code §§ 11-2605(a), 24-301(a). *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

Fact that defendant charged with murder and arson had, on more than one occasion, been examined by staff psychiatrist at hospital as to competency to stand trial and sanity at time offense was committed did not render examination of defendant by private psychiatrist unnecessary for purposes of statute governing court order for defense-related services. D.C. Code §§ 11-2605(a), 24-301(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

Burden of proof.

Burden rests with party seeking commitment of accused to mental institution to prove that accused is then of unsound mind. D.C. Code 1961, § 24-301(a). *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

In view of fact that acquittal by reason of insanity of mentally retarded defendant requires proof by a preponderance of the evidence not only of mental retardation but also of a causal connection between the retardation and the defendant's lack of behavior control, rational basis exists for treating criminal defendants who are acquitted by reason of insanity differently from civilly committed retarded or mentally ill persons and, therefore, classification does not deprive such mentally retarded individuals of equal protection of the laws. D.C. Code § 24-301(d); U.S. Const. Amend. 5. *United States v. Jackson*, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

Under statutes relating to insane criminals, a reasonable doubt about insanity of accused required acquittal and authorized hospital confinement. D.C. Code 1951, § 24-301. *Ragsdale v. Overholser*, 281 F.2d 943, 1960 U.S. App. LEXIS 4184 (C.A.D.C. 1960).

Where there is evidence that accused was of unsound mind when offenses occurred, prosecution is under necessity of establishing to satisfaction of jury beyond reasonable doubt that offenses were not result of accused's insanity. D.C. Code 1951, §§ 22-2901, 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

In order to justify conviction, where there is evidence that accused was of unsound mind when offenses occurred, proof, considered with presumption of sanity, must exclude beyond reasonable doubt the hypothesis that conduct indicted was product of a diseased mind or mental defect. D.C. Code 1951, §§ 22-2901, 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

In determining issue whether or not indicted conduct was product of mental disease or mental defect, or whether accused acted because of mental disorder, there need be only reasonable doubt about it to entitle accused to an acquittal. D.C. Code 1951, § 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

In prosecution for housebreaking, psychiatrist's opinion that defendant had been of unsound mind on date when crime was committed was sufficient to satisfy "some evidence" test and thereby to shift to prosecution the burden of proving defendant's sanity, though psychiatrist could not state categorically that defendant had not known right from wrong. D.C. Code 1951, §§ 22-1801, 22-2201, 22-2202, 24-301. *Durham v. U.S.*, 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

Patient seeking expansion of his conditional release, following his commitment to hospital upon jury verdict of not guilty by reason of insanity of crimes including attempted assassination of President of the United States, failed to satisfy his burden of proving entitlement to release on his proposed terms and conditions by preponderance of the evidence, where both hospital and government psychiatric witnesses opposed patient's petition. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

Under District of Columbia law, regardless of who bears the burden of proof or persuasion in a mental hospital's proposal for the conditional release of a patient who has been in custody after being acquitted of a criminal offense by reason of insanity, such proposal should only be approved if the evidence shows that the proposed conditional release is appropriate under the standards set forth in the statute by a preponderance of the evidence. *United States v. Hinckley*, 346 F.Supp.2d 155, 2004 U.S. Dist. LEXIS 23724 (2004).

Defendant has burden of proving his defense of insanity. D.C. Code 1951, § 24-301(d). *U.S. v. Naples*, 192 F.Supp. 23, 1961 U.S. Dist. LEXIS 3087 (D.D.C.1961).

To require defendant to assume burden of proof on issue of insanity does not violate due process. D.C. Code 1951, § 24-301(d). *U.S. v. Naples*, 192 F.Supp. 23, 1961 U.S. Dist. LEXIS 3087 (D.D.C.1961).

In forgery prosecution, testimony of two psychiatrists and a lay witness to effect that defendant was, in their opinion, suffering from mental illness when he committed the crimes charged satisfied requirement that defendant produce some evidence, and shifted burden of proving sanity to government. Fed.Rules Crim.Proc. rules 29, 33, 18 U.S.C.; D.C. Code 1951, §§ 22-1401, 24-301(a, b, d). *U.S. v. Amburgey*, 189 F.Supp. 687, 1960 U.S. Dist. LEXIS 3236 (D.D.C.1960).

If a defendant fails to establish a *prima facie* case of insanity, the trial court is justified in not presenting the issue to the jury. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

To establish a *prima facie* case of insanity, the defendant must present sufficient evidence to show that at the time of the criminal conduct, as a result of a mental illness or defect, he lacked substantial capacity to recognize the wrongfulness of his act or to conform his conduct to the requirements of the law. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

Defendant has the burden of proving insanity by a preponderance of the evidence. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

A criminal defendant bears the burden of affirmatively establishing his or her insanity by a preponderance of the evidence. *McNeil v. United States*, 933 A.2d 354, 2007 D.C. App. LEXIS 584 (2007).

To establish a *prima facie* case on insanity defense, the defendant must present sufficient evidence to show that at the time of the criminal conduct, as a result of a mental illness or defect, he lacked substantial capacity to recognize the wrongfulness of his act or to conform his conduct to the requirements of the law. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

It was not unconstitutional to place burden of proof on insanity acquittee seeking release to prove his right to release by a preponderance of the evidence. D.C. Code 1981, § 24-301(k). *Hearne v. United States*, 631 A.2d 52, 1993 D.C. App. LEXIS 236 (1993).

Civil committee has right to jury trial on questions of mental illness and dangerousness, whereas criminal acquittee who has entered plea of not guilty by reason of insanity is committed without prior hearing and is entitled only to bench trial at which he, not the Government, bears the burden of proof. D.C. Code 1981, §§ 21-524 to 21-547, 24-301(d)(2), (k). *Walls v. United States*, 601 A.2d 54, 1991 D.C. App. LEXIS 335 (1991).

Defendant, in order to establish insanity defense, had burden of proving by preponderance of evidence that, as result of mental disease or defect, he either lacked substantial capacity to conform his conduct to requirements of law, or lacked substantial capacity to recognize wrongfulness of his conduct. D.C. Code 1981, §§ 11-2605(a), 24-301(j). *White v. United States*, 451 A.2d 848, 1982 D.C. App. LEXIS 450 (1982).

To establish *prima facie* case of insanity, defendant must present sufficient evidence to show that, at time of criminal conduct, as result of mental illness or defect, he lacked substantial capacity to recognize wrongfulness of his act or to conform his conduct to requirements of

law. D.C. Code § 24-301(j). *Pegues v. United States*, 415 A.2d 1374, 1980 D.C. App. LEXIS 307 (1980).

Defendant has burden of proving insanity by preponderance of evidence. D.C. Code § 24-301(j). *Pegues v. United States*, 415 A.2d 1374, 1980 D.C. App. LEXIS 307 (1980).

Statute placing burden of proof in an insanity defense on defendant is not unconstitutional. D.C. Code § 24-301(j). *Smothers v. United States*, 403 A.2d 306, 1979 D.C. App. LEXIS 397 (1979).

Entire burden of establishing an insanity defense rests on defendant, which necessarily includes causality as essential element of defense. D.C. Code § 24-301(j). *United States v. Tyler*, 376 A.2d 798, 1977 D.C. App. LEXIS 339 (1977).

Defendant charged with felony-murder and claiming insanity has burden of proving insanity by preponderance of evidence. D.C. Code § 24-301(j). *Cooper v. United States*, 368 A.2d 554, 1977 D.C. App. LEXIS 403 (1977).

To survive Government's request for directed verdict, defendant charged with felony-murder has burden of establishing *prima facie* case of insanity. D.C. Code § 24-301(j). *Cooper v. United States*, 368 A.2d 554, 1977 D.C. App. LEXIS 403 (1977).

Issue of accused's possible exculpation on grounds of insanity does not arise unless and until the Government has proved beyond a reasonable doubt all the elements of the charged offense; given such proof, statute places upon accused the burden of establishing by a preponderance of the evidence his defense of insanity. D.C. Code § 24-301(j). *Bethea v. U.S.*, 365 A.2d 64, 1976 D.C. App. LEXIS 374 (1976).

Following proper proof by Government, defendant must demonstrate both the existence of a cognizable mental disease or defect and the necessary relationship of such a disability to either his awareness of the requirements of society's code of behavior or his ability to conform his conduct thereto. D.C. Code § 24-301(j). *Bethea v. U.S.*, 365 A.2d 64, 1976 D.C. App. LEXIS 374 (1976).

Statute requiring defendant to establish his defense of insanity by a preponderance of the evidence does not violate due process. D.C. Code § 24-301(j). *Bethea v. U.S.*, 365 A.2d 64, 1976 D.C. App. LEXIS 374 (1976).

Once a genuine or bona fide issue of competency has been raised, thereby rebutting any presumption of competency, the burden is on the government to establish competency by a preponderance of the evidence. In re D.C., 129 WLR 1885 (Super. Ct. 2001).

The acquittee seeking release has the burden of proving by a preponderance of the evidence that it is at least more probable than not that the acquittee will not be violently dangerous in

the reasonable future. *United States v. Gallo*, 117 WLR 2081 (Super. Ct. 1989).

Commitment to hospital.

— Hearings, commitment to hospital.

There is justification for preponderance of proof standard for commitment of the insanity-acquitted even if higher standard is required prior to civil commitment for propensity and even though there is no justification for denying the insanity-acquitted the right to jury trial that is recognized for those involved in civil commitment proceedings. D.C. Code §§ 11-101 et seq., 21-541(a), 21-545, 24-301(d, e). *United States v. Brown*, 478 F.2d 606, 1973 U.S. App. LEXIS 12287 (C.A.D.C. 1973).

Persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings. D.C. Code §§ 21-545(b), 24-301(a, d). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Where feasible, requirements of Hospitalization of Mentally Ill Act as to notice, counsel, and jury trial should be followed in connection with judicial hearing afforded persons found not guilty by reason of insanity. D.C. Code §§ 21-545(b), 24-301(a, d). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Rule that persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings is applicable prospectively only. D.C. Code §§ 21-545(b), 24-301(a, d). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Statute to effect that when it appears to court that accused is of unsound mind or is mentally incompetent so as to be unable to understand proceedings against him court may order accused committed for observation and treatment if necessary did not authorize trial judge's affording hearing to determine for commitment purposes mental condition of accused found not guilty by reason of insanity, applying release standards of 1964 Hospitalization of the Mentally Ill Act or extending to accused rights which the 1964 Act guaranteed only to those civilly committed. D.C. Code 1961, § 24-301(a); D.C. Code §§ 21-501, 21-544. *Cameron v. Mullen*, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

— In general.

Finding of insanity at criminal trial was sufficiently probative of mental illness and dangerousness to justify commitment of accused acquitted on ground of insanity, in that it was not unreasonable for Congress to determine that person who has been found, beyond reasonable doubt, to have committed criminal act

indicates dangerousness, and insanity acquittal supported inference of continuing mental illness. D.C. Code 1981, §§ 21-545(b), 24-301(d)(1, 2), (e, j). *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S. Dist. Col. 1983).

Defendant does not have absolute right to have his guilty plea accepted and trial judge may enter plea of not guilty in behalf of accused, but, if that is done, and defendant, despite his own assertions of sanity, is found not guilty by reason of insanity, commitment to hospital for mentally ill must be under statute providing procedure for confining accused who, though found competent to stand trial, is nevertheless committable as person of unsound mind, or civil commitment provisions. D.C. Code 1961, § 24-301(a, d). *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

Accused, who did not claim that he had been insane when offenses were committed and who presented no evidence to support an acquittal by reason of insanity, was not properly confined in hospital for mentally ill upon finding of trial judge that he was not guilty on ground that he was insane at time of commission of offenses. D.C. Code 1961, § 24-301(d). *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

After jury returns verdict of not guilty by reason of insanity, inquiry as to whether accused is presently committable as person of unsound mind may be undertaken. D.C. Code 1961, § 24-301(a). *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

That accused has pleaded guilty or that government has established that he committed criminal act constitutes only strong evidence that his continued liberty would imperil preservation of public peace and does not justify indeterminate commitment to mental institution on bare reasonable doubt as to past sanity. D.C. Code 1961, § 24-301(a, d). *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

Where agents of hospital who filed petition for involuntary commitment of patient described the patient as a person who was mentally ill, who had been convicted of a serious sexual offense, and who might be dangerous to women, they fulfilled their duty and could not thereafter be held liable for sexual offenses committed by the patient after the Commission on Mental Health dismissed the petition for judicial hospitalization. 18 U.S.C. §§ 1346(b), 2671-2680; D.C. Code 1973, §§ 16-2330, 24-301(a). *Teasley v. United States*, 662 F.2d 787, 1980 U.S. App. LEXIS 11096 (C.A.D.C. 1980).

Short-term commitment without a hearing for evaluation of a mental condition is constitutionally permissible. D.C. Code § 24-301(d).

United States v. Jackson, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

Existence of a substantial probability of danger in the reasonable future provides adequate basis for continued detention and confinement of one who has been acquitted of criminal charges on grounds of insanity for district court to make an affirmative finding that it is at least more probable than not that he will be violently dangerous in the future. D.C. Code § 24-301(e). United States v. Ecker, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Objective of prehearing commitment following acquittal on ground of insanity is observation and examination to ascertain current mental condition, and commitment is temporary and of limited duration; procedure contemplates judicial hearing and determination on present mental condition promptly after completion of examination, and, if need be, another commitment with view to course of treatment which might lead to patient's eventual recovery and release. D.C. Code § 24-301(d)(2). Ashe v. Robinson, 450 F.2d 681, 1971 U.S. App. LEXIS 8091 (C.A.D.C. 1971).

Inasmuch as habeas corpus petitioner would continue to suffer adverse consequences as result of commitment under the Sexual Psychopath Act, issue of validity of the commitment was not moot even though petitioner had been released. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a); Const.Va. § 23; Code Va.1950, § 24.1-42; Const.Md. art. 1, § 2. Justin v. Jacobs, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Confinement of mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime as confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Pretrial commitment under provisions relating to mental examination of accused is for purposes of pretrial mental examination and is not ground for denial of bail otherwise contemplated by Bail Reform Act. D.C. Code § 24-301(a); 18 U.S.C. § 3146 et seq. Marcey v. Harris, 400 F.2d 772, 1968 U.S. App. LEXIS 6455 (C.A.D.C. 1968).

Commission of criminal acts does not give rise to presumption of dangerousness which, standing alone, justifies substantial difference in commitment procedures and confinement conditions for mentally ill, that, while prior criminal conduct is relevant to determination whether person is mentally ill or dangerous, it cannot justify denial of procedural safeguards for such determination, and that prior criminal conduct does not provide automatic basis for allowing significant and arbitrary differences

in such conditions apply where defendant is acquitted on his own plea of insanity. D.C. Code §§ 21-501 to 21-591, 24-301(a, d, e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

There is no reasonable basis for distinction for commitment purposes between those who plead insanity and those who have defense thrust upon them, and neither may be automatically deprived of type of protection afforded by 1964 Hospitalization of Mentally Ill Act. D.C. Code §§ 21-501 to 21-591, 24-301(a, d, e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Fact that persons acquitted by reason of insanity have committed criminal acts and that such fact may tend to show they meet requirements for commitment does not remove such requirements nor justify total abandonment of procedures used in civil commitment proceedings to determine whether such requirements have been satisfied. D.C. Code §§ 21-545(b), 24-301(a, d). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Statute to effect that when, prior to imposition of sentence or prior to expiration of any period of probation, it shall appear to court that accused is of unsound mind or mentally incompetent so as to be unable to understand proceedings against him or to properly assist in his own defense, court may order accused committed for observation and treatment, if necessary, does not authorize commitment after verdict of not guilty by reason of insanity. D.C. Code 1961, § 24-301(a). Cameron v. Mullen, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

Defendant committed to hospital pursuant to statute after being found not guilty by reason of insanity on charge of second-degree murder who was not being detained solely for administration of tranquilizing drug which might have been administered outside hospital and who was receiving other forms of therapy was not being unconstitutionally punished. D.C. Code 1961, § 24-301(d). Collins v. Cameron, 377 F.2d 945, 1967 U.S. App. LEXIS 6657 (C.A.D.C. 1967).

That person involuntarily committed and confined has some dangerous propensities does not, standing alone, warrant his continued confinement in a government mental institution; the dangerous propensities must be related to or arise out of an abnormal mental condition. D.C. Code 1961, § 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Continued confinement of one involuntarily committed on being acquitted of an offense by reason of insanity depends not upon fact that he committed the acts, but upon his present mental condition. D.C. Code 1961, §§ 21-5-1, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse

v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Commitment to Saint Elizabeths Hospital for observation may be ordered for determination of questions other than the competency to understand the proceedings. D.C. Code 1961, § 24-301. Leach v. United States, 353 F.2d 451, 1965 U.S. App. LEXIS 4082 (C.A.D.C. 1965), writ of certiorari denied by 383 U.S. 917, 86 S. Ct. 911, 15 L. Ed. 2d 672, 1966 U.S. LEXIS 2315 (1966).

Commitment to mental hospital pursuant to code after verdict of not guilty by reason of insanity is not adjudication of insanity or incompetency. D.C. Code 1961, § 24-301(d). Green v. United States, 351 F.2d 198, 1965 U.S. App. LEXIS 5155 (C.A.D.C. 1965).

Whenever court receives a certification of incompetency or a certification of restoration of competency and there is no objection by either the accused or the government, court may, in former case, forthwith commit the accused to a mental hospital and, in the latter case, immediately proceed with trial. D.C. Code 1961, § 24-301(a, b). Whalem v. United States, 346 F.2d 812, 1965 U.S. App. LEXIS 5807 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 862, 86 S. Ct. 124, 15 L. Ed. 2d 100, 1965 U.S. LEXIS 868 (1965).

Municipal court did not have jurisdiction under D.C. Code 1961 § 24-301(a) to commit person to mental hospital where court had found accused not guilty by reason of insanity but had finally disposed of the criminal charges against accused more than a year before such commitment and had erroneously committed accused under D.C. Code 1961, § 24-301(d). D.C. Code 1961, § 24-301(a, d). Cameron v. Fisher, 320 F.2d 731, 1963 U.S. App. LEXIS 4984 (C.A.D.C. 1963).

Although inmate of mental hospital had not been informed that possible alternative to commitment, pursuant to statute requiring confinement in mental hospital of those acquitted solely on ground of insanity, was to ask for new trial, inmate whose only possible defense was insanity and whose chances for acquittal on a second trial were minuscule was properly committed to hospital after being acquitted. D.C. Code 1951, § 24-301(d). Curry v. Overholser, 287 F.2d 137, 1960 U.S. App. LEXIS 3233 (C.A.D.C. 1960).

Inmate who had elected to seek verdict of not guilty by reason of insanity could not be heard to complain of commitment to mental hospital pursuant to statute requiring confinement in mental hospital of those acquitted solely on ground of insanity. D.C. Code 1951, § 24-301(d). Curry v. Overholser, 287 F.2d 137, 1960 U.S. App. LEXIS 3233 (C.A.D.C. 1960).

Under statute providing for commitment to mental institution of persons acquitted of criminal charges by reason of insanity, it is contem-

plated that a person acquitted on a charge calling for a maximum sentence of 18 months may be confined to mental institution for two, five or ten years or beyond that, and nothing less will fulfill protective and rehabilitative purposes of statute. D.C. Code 1951, § 24-301. Ragsdale v. Overholser, 281 F.2d 943, 1960 U.S. App. LEXIS 4184 (C.A.D.C. 1960).

Under statute concerning commitment of insane criminals to hospital, a sane person cannot be confined in a mental hospital simply because he is thought to be potentially dangerous if released and his dangerous tendencies must be attributable to an abnormal mental condition if he is to be retained in confinement. D.C. Code 1951, § 24-301. Starr v. U.S., 264 F.2d 377 (C.A.D.C. 1958).

When person suspected of insanity is also accused of crime, trial court is not to be permitted to commit such person to a mental hospital without benefit of a jury or of the Mental Health Commission, even though the person is competent to stand trial, but there must be a report and recommendation by the commission, a jury's verdict if demanded, and a district court order. D.C. Code 1951, §§ 21-306, 24-301(a, b). Williams v. Overholser, 259 F.2d 175, 1958 U.S. App. LEXIS 4714 (C.A.D.C. 1958).

Verdict of not guilty by reason of insanity means that defendant will be confined in hospital for mentally ill until superintendent of hospital certifies, and court is satisfied, that defendant has recovered his sanity and will not in reasonable future be dangerous to himself or others. D.C. Code 1951, § 24-301. Lyles v. U.S., 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

Accused person who is acquitted by reason of insanity is presumed to be insane and may be committed for indefinite period to a hospital for the insane. D.C. Code 1951, § 24-301. Durham v. U.S., 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

Even where an accused whose sanity is in question has been specifically found competent to stand trial and to assist in his own defense, court would be well advised to make commitment to hospital for insane in accordance with statute, so that accused may be confined as long as the public safety and his welfare require. D.C. Code 1951, § 24-301. Durham v. U.S., 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

To justify extended commitment for reasonable time period to restore defendant to competency to stand trial, government must prove, by clear and convincing evidence, that a substantial probability exists that the continued administration of antipsychotic medication will result in a defendant attaining the capacity to permit the trial to proceed in the foreseeable future. United States v. Weston, 260 F.Supp.2d 147, 2003 U.S. Dist. LEXIS 7220 (2003).

Government's request for additional year-long commitment of defendant, who had been hospitalized for four years, was reasonable in attempt to restore him to competency to stand trial, in light of uncontroverted testimony of expert that there was substantial probability that defendant would regain competency in foreseeable future; Bureau of Prisons had proceeded cautiously in increasing defendant's dosage of antipsychotic medications to avoid undesirable side effects, defendant had shown progress, doctors intended to treat defendant with at least two additional antipsychotic medications requiring trial periods of four to six months each, and charges against defendant were for murder. *United States v. Weston*, 260 F.Supp.2d 147, 2003 U.S. Dist. LEXIS 7220 (2003).

If accused is not presently insane or potentially dangerous to himself or others, it is illegal to commit him under statute providing that if court, after competency hearing, shall find accused to be then of unsound mind or mentally incompetent to stand trial, court shall order accused confined to hospital for mentally ill. D.C. Code 1961, § 24-301(a). *United States v. Wilson*, 263 F. Supp. 528, 1966 U.S. Dist. LEXIS 6664 (D.D.C.1966), remanded by 391 F.2d 460, 129 U.S. App. D.C. 107, 1968 U.S. App. LEXIS 8372 (1968).

Commitment of habeas corpus petitioner to mental institution under statute dealing with commitment of defendant in criminal case for mental examination or treatment after petitioner had been found not guilty of charge of assault on ground of insanity, a defense which she had not interposed, was invalid but court would stay its order sustaining writ of habeas corpus for 30 days to enable government to institute civil commitment proceedings if it was deemed advisable. D.C. Code 1961, § 24-301(a). *Mullen v. Cameron*, 255 F. Supp. 326, 1966 U.S. Dist. LEXIS 6601 (D.D.C.1966), affirmed by 387 F.2d 193, 128 U.S. App. D.C. 235, 1967 U.S. App. LEXIS 7257 (1967).

Under District of Columbia statute relating to commitment for mental examination or treatment of defendants in criminal cases who may appear to be incompetent to stand trial, commitment may be made at any time prior to imposition of sentence or prior to expiration of any period of probation, since during those periods the criminal court still has control over defendant. D.C. Code 1961, § 24-301(a). *Mullen v. Cameron*, 255 F. Supp. 326, 1966 U.S. Dist. LEXIS 6601 (D.D.C.1966), affirmed by 387 F.2d 193, 128 U.S. App. D.C. 235, 1967 U.S. App. LEXIS 7257 (1967).

The moment that defendant in criminal case is found not guilty, whether on the ground of insanity or any other ground, criminal court ceases to have any control over him and presiding judge no longer has authority to hold a

hearing under statute dealing with commitment of defendants in criminal cases for mental examination or treatment and cannot commit defendant to a mental institution thereunder. D.C. Code 1961, § 24-301(a). *Mullen v. Cameron*, 255 F. Supp. 326, 1966 U.S. Dist. LEXIS 6601 (D.D.C.1966), affirmed by 387 F.2d 193, 128 U.S. App. D.C. 235, 1967 U.S. App. LEXIS 7257 (1967).

Fact that a person is an habitual petty criminal could not subject him to permanent incarceration in criminal ward of mental institution, and such disposition may not be used as a substitute for laws dealing expressly with habitual criminals. D.C. Code 1951, § 24-301(c-e). *O'Beirne v. Overholser*, 193 F.Supp. 652, 1961 U.S. Dist. LEXIS 3352 (D.D.C.1961).

Where municipal court found accused charged with being drunk or intoxicated on a public street to be of unsound mind and committed him to mental hospital, but made no judicial determination on competency to stand trial, such failure constituted an illegal detention cognizable under writ of habeas corpus since such failure resulted in denial of a right given him by statute as well as his right, if competent, to speedy trial under the constitution. D.C. Code 1951, § 24-301; U.S. Const. Amend. 6. *Williams v. Overholser*, 162 F.Supp. 514, 1958 U.S. Dist. LEXIS 4119 (D.D.C.1958).

Due process did not require that insanity acquittees be afforded same protections conferred upon civil committees before they could be rehospitalized following conditional release to live in community. U.S. Const. Amend. 14; D.C. Code 1981, § 24-301(d). *Brown v. United States*, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Demonstrated dangerousness manifested by insanity acquittee's criminal conduct forms rational basis for utilizing different procedures for recommitting insanity acquittees who have been conditionally released than for patients whose illnesses have not resulted in criminal activity. U.S. Const. Amend. 14; D.C. Code 1981, § 24-301(k). *Brown v. United States*, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Trial court was not required to await motion by government before taking steps to assure insanity acquittee's return to hospital for assessment upon learning that acquittee was convicted of felony in another jurisdiction. D.C. Code 1981, § 24-301(i). *Brown v. United States*, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Order directing defendant's commitment to hospital for 60-day evaluation to assist court in determining whether there was substantial probability that defendant would become competent to stand trial was appealable order. D.C. Code 1981, § 24-301(a). *Farrell v. United States*, 646 A.2d 963, 1994 D.C. App. LEXIS 133 (1994).

Order committing defendant to hospital for 60-day evaluation to assist court in determining whether there was substantial probability that defendant would become competent to stand trial was consistent with statute and Constitution in providing for least restrictive environment. D.C. Code 1981, § 24-301(a). *Farrell v. United States*, 646 A.2d 963, 1994 D.C. App. LEXIS 133 (1994).

Defendant's common-law liberty interest in his bodily integrity was not extinguished by his commitment to lawful custody of hospital for treatment to render him competent to stand trial, but that interest was not absolute and had to be weighed against any legitimate interest asserted by state, with extent of defendant's rights being assessed in context of his confinement. D.C. Code 1981, § 24-301(a); U.S. Const. Amend. 5. *Tran Van Khiem v. United States*, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Commitments under statute providing for commitment to mental hospital of persons acquitted of criminal charges by reason of insanity are neither expressly nor impliedly related to statutory maximum sentences; to contrary, statute contemplates indeterminate period of confinement and treatment, depending on when patient has recovered his sanity or no longer poses danger to himself and others. D.C. Code 1973, § 24-301(d). *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Since crime is relevant to commitment to mental hospitals of persons acquitted of criminal charges by reason of insanity only insofar as it indicates dangerousness, not evil or criminal responsibility, presumption of continuing dangerousness contained in statute providing for such commitment, which is rebuttable by persons acquitted, is both reasonable and valid. D.C. Code 1973, § 24-301(d)(2). *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Individual committed to mental hospital following his acquittal of criminal charges by reason of insanity is confined in hospital for purpose of treatment, not punishment, and length of confinement is governed solely by considerations of his condition and public safety. D.C. Code 1973, § 24-301(d). *Jones v.*

United States, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

"Dangerousness," for purposes of commitment to mental hospital, is no less validly established by proof that defendant committed criminal act, finding necessarily underlying any acquittal by reason of insanity, than by jury determination of mental illness and dangerousness. D.C. Code 1973, § 24-301(d). *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Partially punitive character of criminal commitment procedure dictates, as a matter of equal protection vis-a-vis civil committees, that an acquittee may not be confined for treatment beyond maximum period for which he or she could have been imprisoned for underlying criminal charge; any longer commitment must depend on de novo civil commitment. D.C. Code §§ 21-101 et seq., 24-301(d); U.S. Const. Amend. 14. *Jones v. United States*, 411 A.2d 624, 1980 D.C. App. LEXIS 227 (1980).

A court sua sponte or in response to prima facie evidence submitted to it at any time after proceedings have begun and before sentencing may order a criminal defendant committed to a mental hospital for a period of observation. D.C. Code § 24-301(a). *Bennett v. United States*, 400 A.2d 322, 1979 D.C. App. LEXIS 353 (1979).

Purpose of commitment under statute providing that if any person is acquitted solely on ground of insanity he shall be committed to hospital for mentally ill until such time as he is eligible for release is to provide for mental examination. D.C. Code §§ 24-301, 24-301(d)(1, 2), (e), (k)(1, 7). *United States v. Shorter*, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

The trial judge may commit a defendant for mental examination either on the basis of observations of trial judge or from prima facie evidence submitted to him. D.C. Code § 24-301(a). *Wesley v. United States*, 233 A.2d 514, 1967 D.C. App. LEXIS 194 (App. 1967).

Trial judge's decision to commit defendant for mental examination is a matter of discretion with the judge and the exercise of that discretion will not lightly be disturbed. D.C. Code § 24-301(a). *Wesley v. United States*, 233 A.2d 514, 1967 D.C. App. LEXIS 194 (App. 1967).

Trial judge did not err in denying motion to commit defendant for mental examination merely because he actively attempted to advise counsel during the trial. D.C. Code § 24-301(a). *Wesley v. United States*, 233 A.2d 514, 1967 D.C. App. LEXIS 194 (App. 1967).

Criminal commitment may not act as procedural mechanism to civilly commit. In re Nelson, 112 WLR 1869 (Super. Ct. 1984).

A person may be classified as mentally ill and held under civil commitment proceedings while subsequent criminal proceedings are brought against him. In *re Nelson*, 112 WLR 1869 (Super. Ct. 1984).

— Mandatory commitment to hospital.

Statute to effect that person acquitted solely on ground that he was insane at time of commission of offense shall be ordered by court to be confined in hospital for mentally ill forecloses trial judge from exercising any discretion and does not require finding by trial judge, jury, or medical board as to accused's mental health on date of judgment of acquittal. D.C. Code 1961, § 24-301(d). *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

Defendant found not guilty by reason of insanity and confined pursuant to summary commitment procedures which were inappropriately applied to him was not entitled to immediate release based on the fact that inappropriate commitment procedures had been used, but rather, it was within power of hospital and district court to have defendant detained until proceedings were complete, and only if Government elected not to institute appropriate civil commitment process or if it were determined that defendant were no longer a danger to himself or to others, did he have to be unconditionally released. D.C. Code 1981, §§ 21-528, 24-301(d, k). *Sanderlin v. United States*, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Under District of Columbia law, where defendant does not put his sanity in issue, summary commitment procedures applicable when person tried for offense raises defense of insanity and is acquitted solely on ground that he was insane at time of its commission are not appropriate. D.C. Code 1981, § 24-301(d). *Sanderlin v. United States*, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Under District of Columbia law, more deliberative process of civil commitment, rather than summary commitment procedure applicable to person tried for offense who raises defense of insanity and is acquitted solely on ground that he was insane at time of its commission, should apply to defendant who did not plead or rely on insanity defense but was nevertheless found not guilty by reason of insanity. D.C. Code 1981, § 24-301(d). *Sanderlin v. United States*, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Under District of Columbia law, whether particular defendant "raised" not guilty by reason of insanity defense, so that summary commitment proceeding can be invoked with respect to defendant found not guilty by reason of insanity, is invariably fact-specific determination. D.C. Code 1981, § 24-301(d). *Sanderlin v.*

United States, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Record evidence did not support magistrate's decision finding that defendant was made aware of stipulated not guilty by reason of insanity bargain, and thus, defendant found not guilty by reason of insanity was not subject to summary commitment procedures applicable under District of Columbia law to defendant who raises defense of insanity and is acquitted solely on ground that he was insane at time of offense commission, notwithstanding alleged agreement between prosecution and defense counsel that defendant would not challenge evidence of insanity in return for reduced charge, and defendant's failure to attempt to rebut trial testimony showing he was mentally ill. D.C. Code 1981, § 24-301(d). *Sanderlin v. United States*, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Evidence developed at hearing on motion for unconditional release of defendant found not guilty by reason of insanity could not be used to justify determination that defendant had raised defense of insanity so that summary commitment procedures applied to him under District of Columbia law, notwithstanding absence of record evidence in trial and pretrial proceedings supporting that conclusion. D.C. Code 1981, § 24-301(k). *Sanderlin v. United States*, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Neither "strict scrutiny" nor "intermediate scrutiny" were appropriate standards to review question whether statutory procedures for automatic commitment to mental institutions of federal criminal defendants successfully asserting insanity defense violate equal protection because they are applicable only to persons charged in the District of Columbia, since statute implicated no "fundamental interest" nor "suspect class." D.C. Code 1981, § 24-301; U.S. Const. Amend 5. *United States v. Cohen*, 733 F.2d 128, 1984 U.S. App. LEXIS 22838 (C.A.D.C. 1984).

Where trial court raised the defense of insanity *sua sponte* and found defendant not guilty by reason of insanity of destroying the property of the United States, trial court was not entitled to automatically commit defendant; the automatic commitment applied only in event the defendant himself raised the defense of insanity. D.C. Code § 24-301(d); 18 U.S.C. §§ 700, 1361. *United States v. Wright*, 511 F.2d 1311, 1975 U.S. App. LEXIS 15941 (C.A.D.C. 1975).

Even if District of Columbia statute, providing that no person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by preponderance of the evidence, may be constitutionally applied to a

federal court prosecution of a federal offense, the statute did not require automatic commitment to all defendants acquitted by reason of insanity, regardless of who raised the issue of insanity. D.C. Code §§ 21-541 to 21-545, 24-301(d, j). *United States v. Wright*, 511 F.2d 1311, 1975 U.S. App. LEXIS 15941 (C.A.D.C. 1975).

Where burden of proof on issue of defendant's mental condition was placed on defendant at release hearing and defendant's request for jury trial was denied, defendant's commitment to mental institution following his acquittal by reason of insanity was not valid under the civil commitment statute of the District of Columbia. D.C. Code §§ 21-541 to 21-545, 24-301, 24-301(d), (d)(1), (j). *United States v. Wright*, 511 F.2d 1311, 1975 U.S. App. LEXIS 15941 (C.A.D.C. 1975).

If defendant is found not guilty by reason of insanity, it is the duty of the trial court to commit him to mental hospital for hearing to determine whether defendant is entitled to relief and in that hearing the defendant has burden of proving by preponderance of the evidence that he is not likely to injure himself or other persons due to mental illness if he is released from custody. D.C. Code § 24-301(d), (d)(2), (e). *U.S. v. Brawner*, 471 F.2d 969, 1972 U.S. App. LEXIS 8824 (C.A.D.C. 1972).

Commitment, without hearing, of one found not guilty by reason of insanity is permissible for period required to determine present mental condition. D.C. Code § 24-301(d). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Mandatory commitment under statute providing that any person acquitted solely on ground that he was insane at time of commission of crime shall be confined in a hospital for the mentally ill is permissible only if defendant affirmatively relied on defense of insanity. D.C. Code § 24-301(d). *Rouse v. Cameron*, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Under statute providing that any person acquitted solely on ground that he was insane at time of commission of crime shall be confined in hospital for mentally ill, Congress did not intend to allow automatic commitment when the defense of insanity was thrust upon a defendant who objected to it. D.C. Code § 24-301(d). *Rouse v. Cameron*, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Purpose of detention under statute providing for commitment of person acquitted of crime by reason of insanity is not punitive but serves to protect the public and the subject and to afford place and procedure to treat and, if possible, to rehabilitate the subject. D.C. Code 1961, § 24-

301(d). *Collins v. Cameron*, 377 F.2d 945, 1967 U.S. App. LEXIS 6657 (C.A.D.C. 1967).

Notwithstanding fact that appeal of denial of petition for writ of habeas corpus by person, who was acquitted by reason of insanity and summarily committed to mental hospital pursuant to mandatory provisions of District of Columbia statute raised substantial questions concerning scope of mandatory commitment and its relationship to the Hospitalization of the Mentally Ill Act, in view of petitioner's unconditional release from hospital while appeal was pending, appeal was dismissed as moot. D.C. Code 1961, §§ 22-1301, 24-301(d, e); D.C. Code §§ 21-501 to 21-591. *Collins v. Cameron*, 377 F.2d 945, 1967 U.S. App. LEXIS 6657 (C.A.D.C. 1967).

In event of an acquittal of accused by reason of insanity following his affirmative refusal to rely on such ground as a defense, the automatic commitment procedures of District of Columbia statute would not apply. D.C. Code 1961, § 24-301(d). *Whalem v. United States*, 346 F.2d 812, 1965 U.S. App. LEXIS 5807 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 862, 86 S. Ct. 124, 15 L. Ed. 2d 100, 1965 U.S. LEXIS 868 (1965).

Where defendant, charged with second-degree murder, was found not guilty by reason of insanity, defendant was properly committed as an insane person without a second inquest into defendant's mental condition by another jury sworn to try that issue only. D.C. Code 1940, § 24-301; 24 U.S.C. § 211. *Orencia v. Overholser*, 163 F.2d 763, 1947 U.S. App. LEXIS 2309 (1947).

Commitment to mental hospital of persons acquitted of criminal charges by reason of insanity did not automatically follow acquittal by reason of insanity when question of insanity is raised by court or prosecutor, rather than defendant. D.C. Code 1973, § 24-301(d). *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

When defendant raises insanity defense and is acquitted on that ground, individual is automatically committed to hospital for the mentally ill for up to 50 days; the automatic commitment provision does not apply when trial court raises insanity defense over defendant's objection. (Per Ferren, J., with two Judges concurring specially.) D.C. Code § 24-301(d). *Freundak v. United States*, 408 A.2d 364, 1979 D.C. App. LEXIS 463 (1979).

Defendant acquitted by reason of mental retardation was within statute providing for commitment of insanity-acquitted to hospital for mentally ill, until eligible for release, and

commitment was mandatory. D.C. Code § 24-301(d)(1). *United States v. Shorter*, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

Competency to stand trial.

— Hearings, competency to stand trial.

Purpose of competency hearing is to determine whether accused is mentally competent to understand nature of charges against him and to assist in his defense. D.C. Code § 24-301(a). *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

In competency hearings, limitation or expansion of scope of testimony and qualifications of participating witnesses lie squarely within trial judge's discretion. D.C. Code § 24-301(a). *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

As minimum, competency inquiry must be of record and both parties must be given opportunity to examine all witnesses who testify, and decision on competence must have rational support in the evidence. D.C. Code § 24-301(a); 18 U.S.C. § 4244. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Where conviction was reversed because of error relating to issue of insanity, although newly appointed counsel at second competency hearing agreed to finding of defendant's competency, in view of nature of testimony adduced at prior hearing, defendant's previous history with respect to competency to stand trial and insanity and fact that his counsel apparently did not have benefit of transcript of first hearing, a full hearing was required. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Careful evaluation of accused's condition is required of court during competency hearing. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Competency hearing must be of record and both parties must be given opportunity to examine all witnesses who testify or report on accused's competence. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Judicial determination of competency must be an informed one. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Where, in competency hearing, court blocked attempts to ask hospital's staff psychiatrist about basis for hospital superintendent's conclusion that accused was competent and foreclosed meaningful inquiry when counsel sought to identify area of differences between that conclusion and contrary conclusion of hospital's clinical psychologist, there was no possibility of full and scrupulous evaluation of defendant's competency, precluding informed judicial determination of competency. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Under statute to effect that when it appears to court that accused is of unsound mind or mentally incompetent so as to be unable to stand trial, court may confine him for observation and treatment, if necessary, and that, if hospital reports that person is of unsound mind or mentally incompetent, court may commit him to mental hospital unless he or government objects, in which event court must hold hearing to determine competency of accused to stand trial, court is empowered to hold a hearing only to determine competency. D.C. Code 1961, § 24-301(a). *Cameron v. Mullen*, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

Where the two hospitals to which accused was referred for mental examination certified him as competent to stand trial, in absence of objection either from the accused or the government court could, in its discretion, proceed with trial without holding a hearing to determine competence. D.C. Code 1961, § 24-301(a, b); 18 U.S.C. § 4244. *Whalem v. United States*, 346 F.2d 812, 1965 U.S. App. LEXIS 5807 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 862, 86 S. Ct. 124, 15 L. Ed. 2d 100, 1965 U.S. LEXIS 868 (1965).

Fact that neither defendant nor government objected at trial to court's acceptance of hospital certification of competency without holding a hearing could not be viewed as waiver by defendant of his rights, but it did authorize trial court in its discretion to proceed with trial without a competency hearing. D.C. Code 1961, § 24-301(a, b). *Heard v. United States*, 263 F. Supp. 613, 1967 U.S. Dist. LEXIS 7366 (D.D.C.1967), reversed by 390 F.2d 866, 129 U.S. App. D.C. 100, 1968 U.S. App. LEXIS 8150 (1968).

Where petitioner was arrested on felony charge, he was found by judge of District of Columbia Court of General Sessions, sitting as committing magistrate, to be incompetent to stand trial and he was committed to mental institution, he was entitled to habeas corpus relief but only relief that could be granted was that report of District of Columbia General Hospital to effect that petitioner was not competent to stand trial be referred to District Court for District of Columbia and that hearing

be set in that court on basis of the report on question of mental competency. D.C. Code 1961, § 24-301(a). *Mance v. Cameron*, 260 F. Supp. 851, 1966 U.S. Dist. LEXIS 7366 (D.D.C.1966).

Even if district court erred in not conducting hearing on issue of competency at time of entry of plea of guilty, petitioner could thereafter demand no more than nunc pro tunc hearing. D.C. Code 1961, § 24-301(a). *Mordecai v. United States*, 252 F. Supp. 694, 1966 U.S. Dist. LEXIS 7832 (D.D.C.1966).

As part of procedure required when evidence suggests a substantial question of the defendant's sanity at the time of the crime, the trial judge must conduct an inquiry designed to assure that the defendant has been fully informed of the alternatives available, comprehends the consequences of failing to assert insanity defense, and freely chooses to raise or waive the defense; scope of inquiry will vary according to the circumstances present in each case. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

Refusal of trial court, 20 days after status hearing, to hold a hearing on original competency determination or to recommit defendant to hospital for another 60-day mental examination was not an abuse of discretion, even though defense counsel stated that he could make no sense of defendant's version of facts of case and that he was not convinced his client could assist him at trial, where defense counsel offered no specific reference to changes in defendant's mental conditions since first competency examination. D.C. Code § 24-301(a). *Bennett v. United States*, 400 A.2d 322, 1979 D.C. App. LEXIS 353 (1979).

Trial court's action in refusing to reopen competency proceeding was fully justified where defendant had waived his right to a hearing and court had made an explicit finding of competency of record after defendant had engaged in responsible and meaningful discourse with court. D.C. Code § 24-301(a). *Bennett v. United States*, 400 A.2d 322, 1979 D.C. App. LEXIS 353 (1979).

In prosecution for assault with a dangerous weapon and for possession of a prohibited weapon, trial court did not abuse its discretion in failing to hold competency hearing, in view of facts that defendant objected to such hearing, that psychiatric reports concluded that defendant was competent to stand trial, and that defense counsel alone thought that hearing was required. D.C. Code § 24-301(a). *Lopez v. United States*, 373 A.2d 882, 1977 D.C. App. LEXIS 312 (1977).

Where court, after defendant's conviction and prior to sentencing, requested and received a psychiatric report showing defendant to be competent to engage in the pending proceedings, to which report defendant did not object,

failure to hold hearing on defendant's competency was not an abuse of discretion. D.C. Code § 24-301(a). *Hughes v. United States*, 308 A.2d 238, 1973 D.C. App. LEXIS 331 (1973).

Under statute giving court authority to conduct hearing whenever a person is arrested, indicted, or charged by information and to commit person to mental hospital, trial court had jurisdiction to conduct hearing to determine competency of defendant after his acquittal on grounds of insanity, despite his refusal to raise issue in criminal trial. D.C. Code 1961, § 24-301(a). *United States v. Limber*, 192 A.2d 530, 1963 D.C. App. LEXIS 259 (App. 1963).

Under District of Columbia law pertaining to insane criminals, any hearing must be on issue of defendant's competency to stand trial, and nothing more. D.C. Code 1951, 1 24-301(a, b). *Williams v. District of Columbia*, 147 A.2d 773, 1959 D.C. App. LEXIS 222 (Cr.App. 1959).

Sole effect of statute providing for mental examination of person charged with criminal offense before trial is, in proper case, to suspend criminal proceedings during period of insanity. D.C. Code 1940, § 24-301. *Evans v. U.S.*, 83 A.2d 876, 1951 D.C. App. LEXIS 228 (Cr.App. 1951).

A lunacy inquisition, held before trial to determine if accused is capable of going to trial, is not a criminal proceeding and does not fall within ambit of the Sixth Amendment. D.C. Code 1940 § 24-301; U.S. Const. Amend. 6. *Evans v. U.S.*, 83 A.2d 876, 1951 D.C. App. LEXIS 228 (Cr.App. 1951).

— In general.

Decision as to whether accused is competent to stand trial is finding of fact which may not be set aside on appellate review unless it is clearly arbitrary or erroneous. D.C. Code § 24-301(a). *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Suicide attempts do not establish that accused is no longer sufficiently cognizant of his role in trial or is unable to satisfactorily perform it. D.C. Code § 24-301(a). *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

The determination of a defendant's competency to stand trial must be that of the trial judge; it is the duty of the trial judge to make a specific judicial determination of competency to stand trial, rather than accept psychiatric advice as determinative on the issue. D.C. Code § 24-301. *United States v. David*, 511 F.2d 355, 1975 U.S. App. LEXIS 16340 (C.A.D.C. 1975).

In making a determination of competency to stand trial, it may be very useful for the trial

judge to question both the defendant and his counsel; the applicable criteria measure one's ability to consult with his lawyer and to understand the course of legal proceedings and thus counsel's firsthand evaluation of a defendant's ability to consult on his case and to understand the charges and proceedings against him may be as valuable as an expert psychiatric opinion on competency. D.C. Code § 24-301. *United States v. David*, 511 F.2d 355, 1975 U.S. App. LEXIS 16340 (C.A.D.C. 1975).

For purposes of determining one's competence to stand trial, that is, whether he is able to understand proceedings against him or properly assist in his defense, inquiry is focused on present mental condition, namely, at time of trial. D.C. Code § 24-301(a). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Where finding as to competency was based on hearing held almost 30 months before it was determined that there had not been a properly informed judicial determination, a new trial rather than remand for nunc pro tunc proceedings was required. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Full and scrupulous attention must be given to any evidence concerning competency at trial, whether or not there has been a competency hearing. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Although five months before trial it had been determined that defendant was suffering from drug addiction which was in remission, where defendant did not testify, there was no expert testimony as to any abnormal mental condition, defendant did not seek hearing and there was no evidence of long record of disturbed behavior, failure of trial judge sua sponte to grant hearing on issue of mental competence to stand trial was not basis for reversal. D.C. Code 1961, § 24-301(a). *Powell v. United States*, 373 F.2d 225, 1966 U.S. App. LEXIS 3894 (C.A.D.C. 1966).

Defendant's testimony wherein he admitted that he had been using narcotics throughout the trial and even during lunch recess that very day and testimony of court-appointed psychiatrist that defendant's use of narcotics had previously produced "acute brain syndrome", a mental disorder, raised substantial doubt as to his competency, and therefore imposed on trial court, which had initially found defendant competent to stand trial, a duty to inquire anew into competency. D.C. Code 1961, § 24-301(a). *Hansford v. United States*, 365 F.2d 920, 1966 U.S. App. LEXIS 5596 (C.A.D.C. 1966).

To be competent to stand trial, defendant's memory and intellectual abilities must not be substantially impaired by mental disorder. D.C. Code 1961, § 24-301(a). *Hansford v.*

United States, 365 F.2d 920, 1966 U.S. App. LEXIS 5596 (C.A.D.C. 1966).

1963 robbery conviction was not invalid on ground that, since defendant had been committed to hospital following his 1961 acquittal by reason of insanity, district court was without jurisdiction to try him, in absence of hearing to determine his competency to stand trial in 1963, where prior to both 1961 and 1963 trials defendant was referred to hospital for mental examination resulting, in both instances, in certification by hospital that he was competent to stand trial, and 1963 certification was not objected to by either defendant or government. D.C. Code 1961, §§ 22-2901, 24-301, 24-303. *Green v. United States*, 351 F.2d 198, 1965 U.S. App. LEXIS 5155 (C.A.D.C. 1965).

An inadequate determination by court of question whether defendant is mentally competent to stand trial is not curable by nunc pro tunc hearing, and defendant is entitled to new trial. D.C. Code 1961, § 24-301(a). *Wider v. United States*, 348 F.2d 358, 1965 U.S. App. LEXIS 5337 (C.A.D.C. 1965).

Though hospital report stated that defendant was mentally competent to stand trial, facts of case required exercise of discretion by court by way of further investigation into competency of defendant to stand trial. D.C. Code 1961, § 24-301(a). *Wider v. United States*, 348 F.2d 358, 1965 U.S. App. LEXIS 5337 (C.A.D.C. 1965).

Hospital report that defendant was mentally competent to stand trial was not binding on court. D.C. Code 1961, § 24-301(a). *Wider v. United States*, 348 F.2d 358, 1965 U.S. App. LEXIS 5337 (C.A.D.C. 1965).

Decision to proceed to trial in absence of objection to hospital report that defendant was competent to stand trial was decision calling for exercise of discretion by court. D.C. Code 1961, § 24-301(a). *Wider v. United States*, 348 F.2d 358, 1965 U.S. App. LEXIS 5337 (C.A.D.C. 1965).

The erroneous denial of defendant's pre-trial motion for a mental examination required the remanding of case for a new hearing to ascertain defendant's present competency to stand trial and for a new trial on forgery charge if defendant were found competent, rather than a nunc pro tunc hearing for judicial determination of defendant's competency at time of his original trial. D.C. Code 1961, § 24-301(a). *Holloway v. United States*, 343 F.2d 265, 1964 U.S. App. LEXIS 3974 (C.A.D.C. 1964).

On remand for new hearing on defendant's competency to stand trial after erroneous denial of pre-trial motion for mental examination, the judicial determination of defendant's present competency must be an informed one and could not likely be made from superintendent's letter stating, without supporting information and reasons, that accused was considered competent to stand trial. D.C. Code 1961, § 24-301.

Holloway v. United States, 343 F.2d 265, 1964 U.S. App. LEXIS 3974 (C.A.D.C. 1964).

The letter from hospital superintendent stating conclusion that accused was considered competent to stand trial, without supporting information and reasons, would not come within meaning of terms "report" or "certificate" as used in District of Columbia statute authorizing admission of hospital reports or certificates on mental competency. D.C. Code 1961, § 24-301. Holloway v. United States, 343 F.2d 265, 1964 U.S. App. LEXIS 3974 (C.A.D.C. 1964).

Manslaughter sentences were not void because of absence of judicial adjudication that defendant was competent to stand trial, though he had previously been found to be insane, where certificate of superintendent of hospital stating that defendant had recovered his reason and was then of sound mind was filed in court before defendant pleaded guilty, and court ordered examination by two independent psychiatrists who reported that defendant was of sound mind at the time. 18 U.S.C. § 2255; D.C. Code 1951, § 24-303; D.C. Code 1940, §§ 24-301, 24-303. Hunter v. United States, 323 F.2d 625, 1963 U.S. App. LEXIS 4120 (C.A.D.C. 1963), writ of certiorari denied by 380 U.S. 918, 85 S. Ct. 912, 13 L. Ed. 2d 803, 1965 U.S. LEXIS 1819 (1965).

Determination of accused's eligibility to stand trial may be established by a finding of "restored competency" or a finding that he never was incompetent, and hence assuming that a proceeding to set aside original adjudication of incompetency is required, substance of such proceeding was provided by hearing in which hospital psychiatrist testified that accused was not a mental defective and that there was no indication of organic brain injury or mental illness. D.C. Code 1951, § 24-301(b). Jenkins v. U.S., 307 F.2d 637, 1962 U.S. App. LEXIS 5399 (C.A.D.C. 1962).

Where psychiatrist's report on defendant's competency to stand trial on bad check charge had included statement that defendant's crimes were product of specified mental disease particularly affecting financial judgment and that defendant required further treatment to insure against repetition of the offenses, court properly refused to accept plea of guilty and proceeded to trial to determine that defendant was not guilty by reason of insanity, though defendant had been judicially declared competent to stand trial and to assist in his own defense. 18 U.S.C. § 4244; D.C. Code 1951, § 24-301(a, b). Overholser v. Lynch, 288 F.2d 388, 1961 U.S. App. LEXIS 5476 (C.A.D.C. 1961).

In prosecution for assault with intent to kill and possession of a rifle with intent to use it unlawfully against another, where the court found the defendant not guilty by reason of insanity and it did not appear that defendant

actually understood and acquiesced that the question of his guilt was being tried in that it did not appear that he understood and acquiesced in what was being accomplished without witnesses or evidence and he protested promptly a few days after the verdict, the defendant was entitled to a new trial. D.C. Code 1951, §§ 22-501, 22-3214(b), 24-301. Rucker v. U.S., 280 F.2d 623, 1960 U.S. App. LEXIS 4479 (C.A.D.C. 1960).

Where, after setting aside accused's plea of guilty to charge of public drunkenness and committing accused to hospital for examination and observation, the municipal court found accused of unsound mind and ordered him confined to another hospital but did not determine whether accused was competent to stand trial, accused would be entitled to release on writ of habeas corpus unless the municipal court determined that he was mentally incompetent to stand trial and ordered him confined on that ground or unless proper lunacy proceedings were instituted. D.C. Code 1951, §§ 21-306, 24-301(a, b). Williams v. Overholser, 259 F.2d 175, 1958 U.S. App. LEXIS 4714 (C.A.D.C. 1958).

Where defendant's motion to vacate sentences was denied without hearing and district judge also denied defendant's application for leave to appeal in forma pauperis, defendant's motion in the Court of Appeals for leave to so appeal and for appointment of counsel would be granted in view of fact that trial judge denied such motion without hearing on erroneous grounds that competency to stand trial was not subject to collateral attack but was waived if not advanced at trial, and that defendant did not allege he was in fact mentally incompetent when tried, and that an amendment to the District of Columbia Code abrogated requirement for a judicial determination of restored competency before trial. 18 U.S.C. § 2255; D.C. Code 1951, § 24-301. Blunt v. U.S., 244 F.2d 355, 1957 U.S. App. LEXIS 3094 (C.A.D.C. 1957).

Where defendant's motion for mental examination has been granted, determination of competency should be noted of record, as provided by statute. D.C. Code 1951, § 24-301; 18 U.S.C. § 4244. Watson v. U.S., 234 F.2d 42, 1956 U.S. App. LEXIS 3664 (C.A.D.C. 1956).

In prosecution for housebreaking, trial court's acceptance of waiver of pretrial lunacy hearing from defendant who stated he needed hospitalization and whose testimony showed confusion was error notwithstanding certification from acting superintendent of mental hospital that defendant was mentally competent to stand trial. D.C. Code 1951, §§ 22-1801, 22-2201, 22-2202, 24-301. Durham v. U.S., 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

The sole effect of statutes governing procedure in case of insanity of person charged with crime is to suspend the criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. D.C. Code 1940, §§ 24-301, 24-303. *Haislip v. U.S.*, 129 F.2d 53, 1942 U.S. App. LEXIS 3286 (1942).

Where accused was found to be of unsound mind and was committed to hospital, the verdict of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial but when he was restored to sanity, certificate of hospital superintendent to that effect removed the previous bar. D.C. Code 1940, §§ 24-301, 24-303. *Haislip v. U.S.*, 129 F.2d 53, 1942 U.S. App. LEXIS 3286 (1942).

Where defendant after crimes were committed was involved in automobile accident and suffered cerebral contusions and concussion which resulted in amnesia which prevented him from recollecting any events that took place on afternoon when crimes were committed, but who could construct a knowledge of what transpired from information given to him from other sources, and, except for such vacuity of memory, was perfectly able to follow course of proceedings against him and to discuss them with his attorney, was legally competent to stand trial. D.C. Code 1961, § 24-301(a); 18 U.S.C. § 4244. *United States v. Wilson*, 263 F. Supp. 528, 1966 U.S. Dist. LEXIS 6664 (D.D.C.1966), remanded by 391 F.2d 460, 129 U.S. App. D.C. 107, 1968 U.S. App. LEXIS 8372 (1968).

Amnesia per se in case where recollection was present during time of alleged offenses and where defendant has ability to construct a knowledge of what happened from other sources, and where he has present ability to follow course of proceedings against him and discuss them rationally with his attorney does not constitute incompetency per se, and loss of memory should bar prosecution only when its presence would in fact be crucial to construction and presentation of defense and hence essential to fairness and accuracy of the proceedings. D.C. Code 1961, § 24-301(a); 18 U.S.C. § 4244. *United States v. Wilson*, 263 F. Supp. 528, 1966 U.S. Dist. LEXIS 6664 (D.D.C.1966), remanded by 391 F.2d 460, 129 U.S. App. D.C. 107, 1968 U.S. App. LEXIS 8372 (1968).

Conceptual range of expression "legally incompetent" only embraces deficiencies in accused which actually prevents his fair trial, and mere deficiency, standing alone, is outside limits of the concept. D.C. Code 1961, § 24-301(a); 18 U.S.C. § 4244. *United States v. Wilson*, 263 F. Supp. 528, 1966 U.S. Dist. LEXIS 6664 (D.D.C.1966), remanded by 391 F.2d 460, 129

U.S. App. D.C. 107, 1968 U.S. App. LEXIS 8372 (1968).

However strong and pervasive public policy to bring the morally responsible to bar, it cannot subvert constitutional right to fair trial which is not afforded to accused who is prosecuted while legally incompetent. D.C. Code 1961, § 24-301(a); 18 U.S.C. § 4244. *United States v. Wilson*, 263 F. Supp. 528, 1966 U.S. Dist. LEXIS 6664 (D.D.C.1966), remanded by 391 F.2d 460, 129 U.S. App. D.C. 107, 1968 U.S. App. LEXIS 8372 (1968).

Committing magistrate, including judge of District of Columbia Court of General Sessions when sitting as committing magistrate, does not have power to make finding that person charged with felony is mentally incompetent to stand trial and thereby preclude action on that important question by district court for the District of Columbia. D.C. Code 1961, § 24-301(a). *Mance v. Cameron*, 260 F. Supp. 851, 1966 U.S. Dist. LEXIS 7366 (D.D.C.1966).

Competency to stand trial depends on whether defendant understands nature of proceedings against him and is properly able to assist in his own defense. D.C. Code 1961, § 24-301(a). *U.S. v. Womack*, 211 F.Supp. 578, 1962 U.S. Dist. LEXIS 3371 (D.D.C.1962).

Under statute trial court may or may not make a finding on whether accused is of unsound mind, but must determine whether he is mentally competent to stand trial, when objection is made to the report from hospital and a hearing is held, and if accused is found to be of unsound mind statute requires court to commit defendant to a mental hospital, and if court also determines him to be incompetent to stand trial statute requires the same commitment, but statute requires a judicial determination in the latter type of mental condition, but does not require a determination in the former. D.C. Code 1951, § 24-301. *Williams v. Overholser*, 162 F.Supp. 514, 1958 U.S. Dist. LEXIS 4119 (D.D.C.1958).

It is not the function of the district court to determine in habeas corpus proceeding, the mental competency of an accused to stand trial on a charge pending against him in the municipal court, but the only court that may determine that fact is the court having jurisdiction of such charge. D.C. Code 1951, § 24-301. *Williams v. Overholser*, 162 F.Supp. 514, 1958 U.S. Dist. LEXIS 4119 (D.D.C.1958).

Trial court did not abuse its discretion in failing, sua sponte, to order competency evaluation during trial for arson, malicious destruction of property, and cruelty to children; court had received before trial two uncontested psychiatric examinations affirming defendant's competency and heard defense counsel's repeated assertions that once defendant began taking his medications, he was cooperative and able to assist her, and while defendant dis-

played somewhat disruptive behavior in the courtroom and seemed to be attempting to communicate with the jurors, it appeared that eventually he was able to conform his behavior to proper courtroom decorum. *Phenis v. United States*, 909 A.2d 138, 2006 D.C. App. LEXIS 539 (2006).

Prosecution had fundamental law enforcement and societal interests in administering psychotropic medication to defendant so that he could stand trial for murder, for purposes of determining whether defendant could be medicated over his objections, where it had been impossible for several years to bring defendant to trial and it appeared he would not be brought to trial at all without treatment; defendant's request that his commitment be terminated made prosecution's interest more than symbolic. D.C. Code 1981, §§ 21-521, 24-301(a). *Tran Van Khiem v. United States*, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Any error in amount of deference trial court gave to psychiatric judgments in determining whether to order defendant medicated involuntarily to make him competent to stand trial for murder did not prejudice defendant, in view of appellate determination that government's law enforcement interest outweighs bodily integrity. D.C. Code 1981, § 24-301(a); U.S.C. Const.Amend. 5. *Tran Van Khiem v. United States*, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Prosecution was not required to prove that its interest in medicating defendant, committed for treatment to render him competent to stand trial, was so compelling that no reasonable alternative existed, for defendant to be given medication over his objection; however, availability of reasonable alternatives to proposed treatment, if shown, would be relevant factor in overall inquiry. D.C. Code 1981, § 24-301(a); U.S. Const.Amend. 5, 14. *Tran Van Khiem v. United States*, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Health Care Decisions Act, establishing procedures for making health care decisions for incompetent adults, does not govern decision whether to medicate defendant involuntarily to render him competent to stand trial. D.C. Code 1981, §§ 21-2201(a), 21-2203 to 21-2205, 22-2210, 24-301(a). *Tran Van Khiem v. United States*, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Trial court did not abuse its discretion in denying defendant's day-of-trial motion for competency determination, where defendant failed to present prima facie evidence in support of his request. D.C. Code 1981, § 24-301(a). *Thorne v. United States*, 471 A.2d 247, 1983 D.C. App. LEXIS 556 (1983).

After court finds in Jackson hearing that defendant is unlikely to become competent in foreseeable future, government must institute

civil commitment proceeding, if one is desired, within 30 days, and, while the rule is not inviolable, extension should normally be granted only for extraordinary cause shown. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. *Thomas v. United States*, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Finding that defendant was competent to stand trial was supported by record in that hospital report was unequivocal in its opinion that defendant was competent and not suffering from any mental disorder and, at status hearing, until plea bargaining negotiations were aborted by defendant's exculpatory statement to court, defendant's counsel adamantly agreed with hospital's certification of competency. D.C. Code § 24-301(a). *Bennett v. United States*, 400 A.2d 322, 1979 D.C. App. LEXIS 353 (1979).

A person against whom a prima facie showing has been made of having an unsound mind of paranoid state could not properly be held to have waived counsel intelligently, understandingly, competently, or knowingly. D.C. Code, 1940, § 24-301; U.S. Const. Amend. 6. *Evans v. U.S.*, 83 A.2d 876, 1951 D.C. App. LEXIS 228 (Cr.App. 1951).

Verdict of insanity of accused given as result of lunacy inquisition spoke as of that date and was legal determination that defendant was not then mentally qualified to stand trial. D.C. Code 1940, § 24-301. *Evans v. U.S.*, 83 A.2d 876, 1951 D.C. App. LEXIS 228 (Cr.App. 1951).

Purpose of statute providing for mental examination of person charged with crime before trial is to determine whether prisoner is then capable of understanding the nature and object of the proceedings so as to properly conduct his defense at a trial of the charge against him. D.C. Code 1940, § 24-301. *Evans v. U.S.*, 83 A.2d 876, 1951 D.C. App. LEXIS 228 (Cr.App. 1951).

Construction and application.

Statute to effect that person acquitted solely on ground that he was insane at time of commission of offense shall be confined in hospital for mentally ill is applicable only to defendant who affirmatively relies upon defense of insanity in any way and such defense need not be asserted by formal plea, but statute does not apply to one who has maintained that he was mentally responsible when alleged offense was committed. D.C. Code 1961, § 24-301(d). *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

Passage of Insanity Defense Reform Act did not oust federal district court in District of Columbia of power to apply District of Columbia "self-harm" insanity discharge provision to person who was federally committed under

District law but sought release after federal statute's enactment. D.C. Code 1981, § 24-301(e), (k)(3); 18 U.S.C. § 4241 et seq. *United States v. Crutchfield*, 893 F.2d 376, 1990 U.S. App. LEXIS 920 (C.A.D.C. 1990).

Unless there are constitutional reasons for construing section otherwise, plain terms of section pertaining to automatic commitment of any person who is acquitted of an offense solely by reason of insanity should control such commitment. D.C. Code § 24-301(d), (d)(1). *United States v. Jackson*, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

Plain terms of statute which mandates indefinite commitment of "any person" who raises the defense of insanity and is acquitted solely on that ground indicate congressional intent that such person be committed to a hospital for the mentally ill until he satisfies the burden of proof that he is eligible for release. D.C. Code § 24-301(d), (d)(2), (k)(3). *United States v. Jackson*, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

Dangerousness demonstrated by the commission of a crime and subsequent acquittal by reason of insanity constitute rational basis for disparity in statutory provisions which require court approval for release of mental patient who has been acquitted of criminal charges by reason of insanity but which do not provide for any court review of release of a civil committee. D.C. Code §§ 21-541 to 21-545, 24-301(e). *United States v. Eckert*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

District of Columbia statute which places burden on accused to prove insanity defense by preponderance of evidence applied to productivity as well as insanity, in criminal prosecution, where, at time of offense charged, defense of insanity was a unitary concept requiring proof of insanity and productivity. D.C. Code § 24-301(j). *United States v. Greene*, 489 F.2d 1145, 1973 U.S. App. LEXIS 7659 (C.A.D.C. 1973).

Amendments of statute relating to judicial determination of competency or incompetency were enacted to overrule that much of prior opinion holding that accused could not be ordered to trial on basis of certification of accused's competency to stand trial by superintendent of mental institution wherein accused had been examined. D.C. Code 1961, § 24-301 and subds. (a), (b); 18 U.S.C. § 2255. *Whalem v. United States*, 346 F.2d 812, 1965 U.S. App. LEXIS 5807 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 862, 86 S. Ct. 124, 15 L. Ed. 2d 100, 1965 U.S. LEXIS 868 (1965).

Policies underlying distinction in treatment between mentally responsible law breakers, who are sent to prison and mentally irresponsible law breakers, who are sent to hospitals, are (1) that it is both wrong and foolish to punish where there is no blame and where

punishment cannot correct, and (2) that community's security may be better protected by hospitalization than by imprisonment. D.C. Code 1951, § 24-301 and subds. (c-e). *Williams v. U.S.*, 250 F.2d 19, 1957 U.S. App. LEXIS 4106 (C.A.D.C. 1957).

Term "disease", as used in rule that an accused is not criminally responsible if his unlawful act was product of mental disease or mental defect, means condition which is considered capable of either improving or deteriorating, and term "defect" as so used means condition which is not considered capable of improving or deteriorating and which may be either congenital, or traumatic, or the residual effect of physical or mental disease. D.C. Code 1951, § 24-301. *Durham v. U.S.*, 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

If section of District of Columbia Code stating procedure to be followed by federal District Court for District of Columbia in determining an accused person's mental competence to stand trial requires a jury, it has been superseded in that respect by later statute which does not require a jury and which has general application in Federal Court throughout nation, and federal District Court for District of Columbia did not err in proceeding under later statute without intervention of jury in determining mental competency of an accused to stand trial on murder charge. D.C. Code 1951, § 24-301; 18 U.S.C. § 4244. *Jordan v. U.S.*, 207 F.2d 28, 1953 U.S. App. LEXIS 2821 (C.A.D.C. 1953).

District of Columbia Code section authorizing commitment to mental institution for mental examination as to defendants charged with criminal offenses should be broadly construed and it authorizes commitment for examination as to mental capacity to commit crime at time offense was committed. D.C. Code § 24-301(a). *Marcey v. Harris*, 287 F. Supp. 73, 1968 U.S. Dist. LEXIS 9465 (D.D.C.1968), remanded by 400 F.2d 772, 130 U.S. App. D.C. 301, 1968 U.S. App. LEXIS 6455 (1968).

In so far as there is a repugnancy or inconsistency between section of District of Columbia Code relating to procedure for determining whether an accused is mentally competent to stand trial, and federal statute relating to such procedure, federal statute prevailed since it is later enactment and was intended to cover subject matter comprehensively. D.C. Code, 1951, § 24-301; 18 U.S.C. § 4244. *U.S. v. Jordan*, 109 F.Supp. 528, 1953 U.S. Dist. LEXIS 3219 (D.D.C.1953).

Where question was preliminarily raised as to whether a person charged with murder in first degree was mentally competent to stand trial, federal statute providing for a hearing before court on such questions without a jury was applicable rather than section of District of Columbia Code providing for trial of such ques-

tion by jury. D.C. Code 1951, § 24-301; 18 U.S.C. § 4244. *U.S. v. Jordan*, 109 F.Supp. 528, 1953 U.S. Dist. LEXIS 3219 (D.D.C.1953).

Common-law rights regarding refusal of treatment by defendants, committed for treatment to be rendered competent to stand trial, are essentially same rights as those recognized in commitment statute and, therefore, commitment statute is not in derogation of common law, such that it would be subject to strict construction. D.C. Code 1981, § 24-301(a). *Tran Van Khiem v. United States*, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Congress intended there to be a separate release hearing after commitment to a hospital for the mentally ill and evaluation of acquittee in a hospital setting. D.C. Code 1981, § 24-301(d). *United States v. Mendelsohn*, 443 A.2d 1311, 1982 D.C. App. LEXIS 319 (1982).

Principle that penal character of statute depends on its underlying nature and whether it is reasonably supported by legitimate state interest applies equally to analysis of statutes providing for commitment of persons to mental hospitals. D.C. Code 1973, §§ 21-545(b), 24-301(d). *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Statute providing for commitment to mental hospitals of persons acquitted of criminal charges by reason of insanity is not rendered "penal" by fact that it is predicated on commission of crime since evidence of crime is only one element triggering such commitment, other element being proof of insanity by preponderance of evidence. D.C. Code 1973, § 24-301(d). *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Where hearing to determine need for further confinement at psychiatric hospital of confined party, who had been found not guilty by reason of insanity of taking indecent liberties with minor, was at confined party's request following Bolton hearing and was not preceded by certificate from superintendent of hospital, statutory provision governing such proceedings instituted by confined party controlled over statutory provision permitting release of confined party from hospital upon certification of superintendent of such hospital. D.C. Code §§ 22-3501, 24-301(e, k). *Harris v. United States*, 356 A.2d 630, 1976 D.C. App. LEXIS 527 (1976).

Standard of incompetency is defined differently in adult proceedings or proceedings involving juveniles subject to transfer to adult courts under subsection (a) of this section than it is in juvenile proceedings under § 16-2315(c). *In re W.F.*, 116 WLR 1913 (Super. Ct. 1988).

Drug use.

To retain any moral or legal salience, the settled insanity doctrine must—if it is ever

justified—be limited to those cases where the initial choice to abuse alcohol or drugs has become so attenuated over time that it serves little or no purpose to hold the defendant accountable for that choice once a permanent mental illness has taken hold through years of chronic substance abuse. *McNeil v. United States*, 933 A.2d 354, 2007 D.C. App. LEXIS 584 (2007).

Defendant did not present prima facie evidence of drug-induced insanity, due to defendant's ingestion of phencyclidine (PCP) for a long and extended period of time, so as to require trial judge to submit the question of settled insanity to the jury; although there was evidence of extended use of PCP, there was no evidence that defendant was suffering from a drug-induced mental illness at the time of the homicide, and defendant did not present sufficient evidence which, standing alone, would have permitted jury, without speculation, to accept her defense. *McNeil v. United States*, 933 A.2d 354, 2007 D.C. App. LEXIS 584 (2007).

It was critical to the defense that defendant muster the required evidence to show that she had, at the time of the crime, ingested phencyclidine (PCP) for a long and extended period of time, which caused her to have a condition of mental illness which manifested itself in a psychotic condition, not simply intoxication, of a permanent nature, and as in any insanity defense, defendant needed to show that, as a result of this illness, she was unable to appreciate the criminality of her actions, so as to conform her behavior to lawful requirements. *McNeil v. United States*, 933 A.2d 354, 2007 D.C. App. LEXIS 584 (2007).

Escape from hospital.

With regard to suit against hospital for damages suffered when plaintiff was attacked and brutally stabbed by psychiatric patient who escaped from hospital, release statute [D.C. Code 1981, § 24-301] under which patient was confined after being found not guilty of murder by reason of insanity created standard of reasonable care that had to be met by hospital, since statute was designed to promote public safety, plaintiff was a member of class intended to be protected by the provision, and statute imposed a specific duty on hospital. *White v. United States*, 780 F.2d 97, 1986 U.S. App. LEXIS 21212 (C.A.D.C. 1986).

Arrest of defendant on felony charge was terminated and lost its legal vitality when he was acquitted by reason of insanity; thus, defendant's escape from mental hospital to which he was committed following the acquittal did not constitute an escape from custody pursuant to a lawful arrest and did not violate the Federal Escape Act. 18 U.S.C. § 751(a); D.C. Code § 24-301(d, h, i). *United States v. Powell*,

503 F.2d 195, 1974 U.S. App. LEXIS 6862 (C.A.D.C. 1974).

That petitioner eloped from hospital, to which she had been committed, after district court had stayed its order of release in habeas corpus proceeding did not render moot government's appeal, inasmuch as district court had jurisdiction over petitioner at time of its order. D.C. Code 1961, § 24-301(a). *Cameron v. Mullen*, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

As long as there was outstanding an order of restraint on liberty of petitioner and as long as her custodians were within jurisdiction of Court of Appeals, habeas corpus case involving propriety of committing petitioner to hospital was not moot, and could not be dismissed on ground that petitioner who had eloped from hospital was not in custody for habeas corpus purposes. D.C. Code 1961, § 24-301(a). *Cameron v. Mullen*, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

Appellate function of Court of Appeals was to act upon propriety of decision of district court issuing writ of habeas corpus and ordering release of petitioner committed to hospital, even though petitioner had eloped from hospital after district court had stayed its order of release. D.C. Code 1961, § 24-301(a). *Cameron v. Mullen*, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

Expert testimony.

Common notions of fairness suggest that communications which provide a government psychiatrist with information on which he may base an opinion as to a defendant's mental condition should be shared with opposing counsel; until a psychiatrist who is examining a subject pursuant to court order reaches a diagnosis or while he is in process of changing a diagnosis he is a neutral expert and ex parte communications between himself and either side are out of place; however, the situation changes when the psychiatrist renders the diagnosis, becomes identified as a prosecution or defense witness and confers with attorneys for that side in preparation for trial. D.C. Code § 24-301(a). *United States v. Morgan*, 567 F.2d 479, 1977 U.S. App. LEXIS 11467 (C.A.D.C. 1977).

Testimony of government psychiatrist, in prosecution for sexual assault on 13-year-old boy, that defendant's sanity was evidenced by his very good recollection of the events was prejudicial to defendant's defense on the merits and entitled defendant, upon remand, to a bifurcated trial on the merits and his insanity defense, even though the defense on the merits was a bare denial, where a limiting instruction would not have effectively dispelled the prejudice, and a mistrial would have been an unattractive result. D.C. Code § 24-301; 18 U.S.C.

§ 4244; U.S. Const. Amend. 5. *United States v. Bennett*, 460 F.2d 872, 1972 U.S. App. LEXIS 11771 (C.A.D.C. 1972).

When psychologist has requisite training or experience, his testimony in competency hearing should be given consideration with that of other experts in field of mental disorder. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Court which rather than evaluating psychologist's qualifications in competency hearing turned hearing into inquiry into any psychologist's competency, without medical training, to make informed observations about accused was erroneous. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

Lack of general medical background may affect weight given to psychologist's testimony in competency hearing. D.C. Code § 24-301(a). *Blunt v. United States*, 389 F.2d 545, 1967 U.S. App. LEXIS 4215 (C.A.D.C. 1967).

All indigent inmates who petition for habeas corpus for release from confinement in a hospital, including those committed as insane prisoners, may demand expert testimony of members of Commission on Mental Health, or court on its own motion may require it. D.C. Code 1951, § 24-301(d). *Curry v. Overholser*, 287 F.2d 137, 1960 U.S. App. LEXIS 3233 (C.A.D.C. 1960).

Where doctor, who had examined defendant for purpose of determining his mental competency to stand trial, did not testify to any statement made by defendant on issue of guilt, and judge's finding of mental competency to stand trial was not brought to notice of jury, it was immaterial whether commitment to mental institution for determination of mental competency to stand trial was made under federal statute or under District of Columbia statute; and neither statute barred doctor's testimony expressing his opinion that defendant was sane when he committed act. 18 U.S.C. § 4244; D.C. Code 1951, § 24-301. *Edmonds v. U.S.*, 273 F.2d 108, 1959 U.S. App. LEXIS 2922 (C.A.D.C. 1959).

Testimony in criminal prosecution relating to issue of sanity of accused at time of commission of offense, given in terms of right or wrong and irresistible impulse tests, may still be received, despite other subsequently accepted criteria, if expert witness feels able to give it in such terms. D.C. Code 1951, § 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

Rule that judgment of psychiatrist, while relevant, is not necessarily controlling on issue of sanity of accused at time of commission of offense is not authority for jury to disregard expert testimony, which must be considered with other evidence and not arbitrarily re-

jected. D.C. Code 1951, § 24-301. Douglas v. U.S., 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

In light of the testimony of government's experts, indicating that mental patient, who had been acquitted, by reason of insanity, on charges relating to his attempt to assassinate the President, continued to exhibit deceptive behavior and to underrepresent his problems and pathology, and that the nature of his relationship with a female friend was unclear, district court could not find that patient would not be a danger to himself or others, as required for grant of conditional release proposals presented, under District of Columbia law, by the patient and by the hospital. *United States v. Hinckley*, 346 F.Supp.2d 155, 2004 U.S. Dist. LEXIS 23724 (2004).

Under District of Columbia law, the court, in receiving and considering the evidence as to whether a person in the custody of a mental hospital after being acquitted of a criminal offense by reason of insanity has recovered sufficiently to warrant a grant of conditional release, is not required to accept the opinion of any expert witness, or even the unanimous opinion of all the experts, but must consider all relevant evidence including the patient's hospital file, the court files and records in the case, and whatever illumination is provided by counsel. *United States v. Hinckley*, 346 F.Supp.2d 155, 2004 U.S. Dist. LEXIS 23724 (2004).

In light of patient's ability and propensity to deceive his treatment providers, expert testimony that patient's mental disease was such that any symptomatic recurrence of his psychosis would evolve over longer period of time than twelve hours, and thus would be detectable in advance of unescorted visit, did not warrant granting conditional release of 12 hours per month to patient, who was committed to hospital following acquittal by reason of insanity for attempted assassination of United States President. D.C. Code 1981, § 24-301(k). *United States v. Hinckley*, 967 F. Supp. 557, 1997 U.S. Dist. LEXIS 8899 (1997), affirmed by 140 F.3d 277, 329 U.S. App. D.C. 315, 1998 U.S. App. LEXIS 7390, 48 Fed. R. Evid. Serv. (CBC) 1243 (1998).

Practicing psychiatrists who had treated patient were qualified to give expert opinion in civil commitment case as to whether patient was likely to injure himself and others in future due to his failure to take prescribed psychotropic medication. Fed.Rules Evid.Rule 702, 18 U.S.C.; D.C. Code 1981, §§ 21-522, 21-544, 21-902(b)(2), 24-301(e)(1, 2). In re Melton, 597 A.2d 892, 1991 D.C. App. LEXIS 273 (1991).

Although trial court, considering a request for conditional release of a patient previously acquitted of a criminal offense by reason of insanity, is not bound by testimony of the "experts," it may not arbitrarily disregard such

testimony; court must take into account such professional opinions, whether there is a consensus expressed, and whether the doctors have persuasively given reasons for their opinions, however, if the court has reason to reject the opinions of the experts on issue of dangerousness, it may do so even though they are unanimous. D.C. Code 1981, § 24-301(e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

The fact that Congress has chosen to permit psychiatrists to offer opinions on the issue of future dangerousness in specifically prescribed instances does not mean that absent specific legislation such testimony is admissible at other stages of those proceedings when Congress has chosen to remain silent. In re Wilson, 111 WLR 1065 (Super. Ct. 1983).

Extradition.

If the government is able to convince the fact-finder by clear and convincing evidence of the identity, fugitivity, and charge of criminality in a demanding state by extrinsic evidence, and if the requisition papers are in order, thus negating the limited defenses to extradition, determination of the arrestee's mental competence is irrelevant; however, if the government does not meet this burden, determination of the arrestee's competence to assist counsel in his or her defense is necessary, and further examination may be warranted. *United States v. Hardy*, 121 WLR 621 (Super. Ct. 1993).

Habeas corpus.

— Burden of proof, habeas corpus.

As habeas corpus proceeding on petition of mental patient for complete release from confinement is not strictly adversary in nature, conventional rules regarding burden of coming forward with evidence do not apply and hearing court and the parties bear equal responsibility to see that decision is had upon all the relevant evidence. D.C. Code §§ 21-546 to 21-549, 24-301(g). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Mental patient who seeks complete release from confinement by writ of habeas corpus need only establish, by preponderance of the evidence, that he is no longer likely to injure himself or other persons because of mental illness. D.C. Code §§ 21-546 to 21-549, 24-301(g). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Burden of proof, in habeas corpus proceeding by one committed to mental hospital after being found not guilty by reason of insanity, is the same as that for civilly committed patients. D.C. Code § 24-301(d). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

To establish eligibility for release on habeas corpus, patient committed to mental hospital

after being found not guilty of offense by reason of insanity must prove freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future. D.C. Code § 24-301(e). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Rule that habeas corpus petitioner must prove that his detention is illegal by preponderance of evidence applies in habeas corpus proceeding by one committed to mental hospital after being found not guilty of offense by reason of insanity, and thus court must find, by preponderance of evidence, that patient's commitment is no longer valid, that is, that he is no longer likely to injure himself or other persons due to illness. D.C. Code §§ 21-545(b), 24-301(a, d, e). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Petitioner seeking release from hospital by writ of habeas corpus after commitment pursuant to statute after being found not guilty of crime by reason of insanity has burden of showing his eligibility for relief and must establish freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future. D.C. Code 1961, § 24-301(d). *Collins v. Cameron*, 377 F.2d 945, 1967 U.S. App. LEXIS 6657 (C.A.D.C. 1967).

In view of statute providing that person who has been committed to hospital for mentally ill because he was acquitted of criminal offense solely on ground of insanity at time of commission may be released unconditionally by District Court if superintendent certifies that he has recovered, that he will not in reasonable future be dangerous to himself or others, and that, in opinion of superintendent, he is entitled to unconditional release, to demonstrate that habeas corpus hearing that he is entitled to unconditional release, the patient must show that he has recovered, that he will not in reasonable future be dangerous to others and that superintendent acted arbitrarily and capriciously in refusing to certify him and recommend him for unconditional release. D.C. Code 1951, § 24-301(d, e, g). *Overholser v. Russell*, 283 F.2d 195, 1960 U.S. App. LEXIS 4177 (C.A.D.C. 1960).

Petitioner maintaining proceeding for writ of habeas corpus to secure release from mental institution in which he has been confined upon his acquittal of criminal charge by reason of insanity has heavy burden of proof that he is not dangerous or potentially dangerous to himself or others, exceeding a standard of proof by a preponderance of evidence, and in a close case, even where preponderance of evidence favors the petitioner, the doubt, if reasonable doubt exists about danger to public or patient, cannot be resolved so as to risk danger to public or individual. D.C. Code 1951, § 24-301.

Ragsdale v. Overholser, 281 F.2d 943, 1960 U.S. App. LEXIS 4184 (C.A.D.C. 1960).

Statute governing petitions and proposals for the conditional release of a patient committed to a hospital following a verdict in a criminal trial of not guilty by reason of insanity does not make clear who carries the burden of proof in a hospital-initiated release proposal. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

When the question of the entitlement to conditional release of a patient committed following a verdict in a criminal trial of not guilty by reason of insanity comes before the district court on a patient's petition therefor, the person seeking release shall have the burden of proof, and the court must find by a preponderance of the evidence that the person is entitled to conditional release. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

Person who sought release from hospital to which he had been committed after having been found not guilty of housebreaking and larceny on ground of insanity had burden of proving by a preponderance of evidence that he had recovered his sanity and would not in reasonably foreseeable future be dangerous to himself or others by reason of mental disease or defect, and that failure of superintendent of hospital to certify him for release was arbitrary or capricious. D.C. Code 1961, § 24-301(c, g). *Robertson v. Cameron*, 224 F. Supp. 60, 1963 U.S. Dist. LEXIS 6409 (D.D.C.1963).

In habeas corpus proceeding brought by petitioner claiming right to be released from hospital for the mentally ill, it was necessary for petitioner to show not only that he had recovered his sanity but also that superintendent of hospital was arbitrarily and capriciously withholding certificate of recovered sanity; and, on record presented, such burden was not sustained. D.C. Code 1951, § 24-301(d). *O'Beirne v. Overholser*, 180 F.Supp. 572, 1960 U.S. Dist. LEXIS 5317 (D.D.C.1960).

— Findings, habeas corpus.

Finding that petitioner himself sought introduction of insanity defense at his trial was clearly erroneous in view of evidence, including evidence that new counsel retained by petitioner's mother did not confer with petitioner prior to filing motion for pretrial mental examination and that petitioner did not even know new counsel's identity when he saw him at hearing on the motion and thought that he was still being represented by assigned counsel. D.C. Code §§ 22-3204, 24-301(a, d). *Rouse v. Cameron*, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Finding that petitioner evidenced his acquiescence in insanity defense by waiting almost four years to attack validity of his mandatory

commitment to hospital for the mentally ill was not warranted in light of petitioner's apparent disabilities, including his lack of financial means and learning in the law and the likelihood that he had been suffering from some mental illness. D.C. Code §§ 22-3204, 24-301(a, d). *Rouse v. Cameron*, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Findings and conclusions in habeas corpus proceeding were insufficient to show that petitioner had fair trial before being committed to hospital by Municipal Court after being found not guilty of crime by reason of insanity. D.C. Code 1951, § 24-301. *O'Beirne v. Overholser*, 287 F.2d 133, 1960 U.S. App. LEXIS 3232 (C.A.D.C. 1960).

In habeas corpus proceeding brought by one who had been committed to mental institution upon acquittal of criminal charges on ground of insanity, brought to secure release from institution, finding that petitioner was no longer mentally ill was clearly erroneous. D.C. Code 1951, § 24-301(g). *Overholser v. Russell*, 283 F.2d 195, 1960 U.S. App. LEXIS 4177 (C.A.D.C. 1960).

Defendant failed to establish insanity as a defense to stalking, assault with intent to kill while armed, and other offenses, even assuming defendant suffered from a mental disease or defect, where defendant's expert in psychology and forensic psychology did not conclude that defendant could not appreciate the wrongfulness of his actions, or that he was unable to control his conduct and conform it to the law. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

— In general.

Under statute precluding a person who has been committed to a hospital for mentally ill after being acquitted by reason of insanity and who has not filed a motion for his release from applying for habeas corpus unless his remedy is inadequate or ineffective to test validity of his detention, defendant, who was committed under pre-Bolton procedures, was foreclosed from petitioning for federal habeas corpus, on ground that he should be released from confinement unless government bore burden of proving that his mental condition fell within intentment of relevant commitment statutes, until he first presented to District of Columbia Superior Court his argument for altering burden of proof in regard to pre-Bolton defendants. D.C. Code §§ 24-301, 24-301(d), (k)(1, 3, 7); 18 U.S.C. § 2255. *Johnson v. Robinson*, 509 F.2d 395, 1974 U.S. App. LEXIS 5545 (C.A.D.C. 1974).

Administrative remedy for mental patient which must be exhausted prior to petition for habeas corpus is medical examination rather than request for examination and if examination has been conducted within six months prior to habeas corpus petition, the administra-

tive remedy was exhausted. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Only if required medical examination is in progress when mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy of complete medical examination. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

If mental patient is undergoing medical examination at time his petition for habeas corpus is filed, district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, district court should proceed to determination of the issues. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition. D.C. Code §§ 21-546, 21-548, 24-301(e). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Patients committed to mental hospital after being found not guilty by reason of insanity may establish their eligibility for release by writ of habeas corpus. D.C. Code § 24-301(d). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. D.C. Code §§ 21-501 to 21-591, 21-544, 21-545, 22-3204, 24-301(a, d). *Rouse v. Cameron*, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Patient, who had been committed to hospital under statute after having been acquitted on criminal charge solely on ground that he was insane, who had received little or no treatment at hospital, and who brought habeas corpus proceeding in federal District Court, was entitled to hearing and findings as to whether he was receiving adequate treatment, and, if he was not, District Court could allow hospital reasonable opportunity to initiate treatment, and unconditional or conditional release might be in order if it should appear that opportunity for treatment had been exhausted or treatment was otherwise inappropriate. D.C. Code 1961, § 24-301(d). *Tribby v. Cameron*, 379 F.2d 104, 1967 U.S. App. LEXIS 6742 (C.A.D.C. 1967).

Petitioner involuntarily committed to mental hospital on being acquitted of an offense by

reason of insanity had right to treatment that was cognizable in habeas corpus, and law and justice required remand for hearing and findings on whether petitioner had received adequate treatment and, if not, the details and circumstances underlying the reason why he had not. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301; 18 U.S.C. §§ 2241(c)(3), 2243. *Rouse v. Cameron*, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Habeas corpus petition filed by one who was confined to hospital following acquittal by reason of insanity, alleging that he was free from named mental conditions, of sound mind and not dangerous to himself or society, together with return, presented question of fact requiring resolution, assuming it was not raised in untimely fashion. 24 D.C. Code 1961, § 24-301(d); 18 U.S.C. § 2244. *Whittaker v. Overholser*, 299 F.2d 447, 1962 U.S. App. LEXIS 6108 (C.A.D.C. 1962).

If District Court were to find that habeas corpus petition filed by one committed to mental hospital following acquittal by reason of insanity, which, together with return, presented factual issue, was not procedurally premature, court was to grant hearing, on question of eligibility for release under statute. 24 D.C. Code 1961, § 24-301(d). *Whittaker v. Overholser*, 299 F.2d 447, 1962 U.S. App. LEXIS 6108 (C.A.D.C. 1962).

Where doctors who testified at habeas corpus proceeding for release of inmate who had been committed after acquittal by reason of insanity were among those whom he had called as witnesses in his own behalf at criminal trial and were thoroughly familiar with his history and behavior at hospital, and inmate did not request testimony of members of Commission on Mental Health, although private psychiatrists were not available to testify as to inmate's mental condition at time of proceeding, inmate received due process of law. D.C. Code 1951, § 24-301(d). *Curry v. Overholser*, 287 F.2d 137, 1960 U.S. App. LEXIS 3233 (C.A.D.C. 1960).

Habeas corpus jurisdiction of District Court was properly invoked for release from hospital to which petitioner was committed by Municipal Court on being found not guilty of crime by reason of insanity. 18 U.S.C. § 2255; D.C. Code 1951, § 24-301(b). *Curry v. Overholser*, 287 F.2d 137, 1960 U.S. App. LEXIS 3233 (C.A.D.C. 1960).

Under statutory provisions authorizing one confined to mental institution because of his acquittal of crime by reason of insanity to maintain habeas corpus proceeding to test legality of his confinement, habeas corpus hearing is de novo proceeding to examine into petitioner's existing mental condition, and at such hearing he is free to put in evidence, both lay

and expert, to demonstrate that he has recovered to the point where he will not be dangerous to himself or others. D.C. Code 1951, § 24-301. *Ragsdale v. Overholser*, 281 F.2d 943, 1960 U.S. App. LEXIS 4184 (C.A.D.C. 1960).

Where petitioner was committed to hospital after acquittal by reason of insanity and his petition for habeas corpus failed to allege that he would not in the reasonable future be dangerous to himself or others and the hospital superintendent stated that he could not certify that the petitioner had recovered and petitioner failed to put in issue the superintendent's conclusion, district judge properly concluded that a hearing was not necessary. D.C. Code 1951, § 24-301. *Fielding v. Overholser*, 268 F.2d 898, 1959 U.S. App. LEXIS 3554 (C.A.D.C. 1959).

Person in commitment of District of Columbia hospital and housed in maximum security ward could not seek federal habeas corpus relief before he exhausted remedies under District of Columbia law. 18 U.S.C. § 2254(b, c); D.C. Code 1981, § 24-301(k). *Thomas v. St. Elizabeth's Hospital*, 720 F. Supp. 14, 1989 U.S. Dist. LEXIS 11548 (1989), affirmed by 919 F.2d 182, 287 U.S. App. D.C. 73, 1990 U.S. App. LEXIS 21425 (1990).

Mental hospital superintendent's return in habeas corpus proceeding by inmate, asserting generally that inmate had not recovered from "abnormal mental condition" and required further treatment, without explaining quoted phrase or describing past or future treatment, was insufficient on its face. D.C. Code 1951, § 24-301(c-e). *O'Beirne v. Overholser*, 193 F.Supp. 652, 1961 U.S. Dist. LEXIS 3352 (D.D.C.1961).

In habeas corpus proceeding brought by petitioner who had been committed to St. Elizabeth's Hospital after being found not guilty of criminal charge by reason of insanity and who alleged that he was receiving no individual psychotherapy at hospital and that no further institutional care was necessary, petitioner was not, on facts disclosed, entitled to independent examination by member of mental health commission. D.C. Code 1951, § 24-301(d). *Hayward v. Overholser*, 191 F.Supp. 464, 1960 U.S. Dist. LEXIS 3131 (D.D.C.1960).

Records of Municipal Court imported verity, and in habeas corpus proceeding brought by patient of hospital for the mentally ill, court would not go behind record to determine whether patient had had opportunity to present his defense in Municipal Court prosecution in which he had been found not guilty by reason of insanity at time offense was committed. D.C. Code 1951, § 24-301(d). *O'Beirne v. Overholser*, 180 F.Supp. 572, 1960 U.S. Dist. LEXIS 5317 (D.D.C.1960).

Use of writ of habeas corpus may not be limited by statute, and person who claims to be

deprived of his liberty illegally may always resort to writ. D.C. Code 1951, § 24-301(g). *O'Beirne v. Overholser*, 180 F.Supp. 572, 1960 U.S. Dist. LEXIS 5317 (D.D.C.1960).

In habeas corpus proceeding seeking unconditional release from mental institution to which petitioner had been committed after acquittal on ground of insanity, return to writ of habeas corpus filed on behalf of superintendent of mental hospital stating that psychosis from which petitioner was suffering was in remission since his readmission to hospital on a certain date did not warrant granting of petitioner's unconditional release from hospital. D.C. Code 1951, § 24-301(d, e). In *re Rosenfield*, 157 F.Supp. 18, 1957 U.S. Dist. LEXIS 2442 (D.D.C.1957).

— Multiple petitions, habeas corpus.

Where mental hospital patient's habeas corpus petition for release from mental hospital was based on his mental health at time petition was filed, petition was not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. D.C. Code §§ 21-546, 21-548, 24-301(e). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Where ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution. D.C. Code §§ 21-546, 21-548, 24-301(e); 18 U.S.C. § 2244(a). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Affirmance of judgment denying writ of habeas corpus to one who had been committed to hospital pursuant to statute following verdict of not guilty by reason of insanity was without prejudice to filing of new petition for writ. D.C. Code 1961, § 24-301(d, e). *Miller v. Cameron*, 335 F.2d 986, 1964 U.S. App. LEXIS 5098 (C.A.D.C. 1964).

— Review, habeas corpus.

Where, because district court held no hearing on habeas corpus petition, reviewing court had no facts before it on which to determine whether petitioner, who had been committed to mental hospital following acquittal on ground of insanity and recommitted following Bolton-type hearing, was receiving treatment in least restrictive alternative consistent with legitimate purposes of commitment, order denying habeas corpus relief was vacated and case remanded. D.C. Code § 24-301(d)(2). *Ashe v. Robinson*, 450 F.2d 681, 1971 U.S. App. LEXIS 8091 (C.A.D.C. 1971).

Absence of findings relating reason for denial of habeas corpus petitioned for by one committed to mental hospital following acquittal by reason of insanity required reviewing court to retain jurisdiction and remand to give District Court opportunity to amplify record to set forth such reasons. 24 D.C. Code 1961, § 24-301(d); 18 U.S.C. § 2244. *Whittaker v. Overholser*, 299 F.2d 447, 1962 U.S. App. LEXIS 6108 (C.A.D.C. 1962).

Where accused was found not guilty by reason of insanity and was committed to hospital and some two months thereafter accused petitioned for writ of habeas corpus without prepayment of costs and District Court denied such petition without a hearing and without stating reasons for denial, case could be remanded and District Court, if it rejected allegation of poverty, would be required to state basis for such rejection, and if leave to file without costs was permitted or if accused should pay necessary filing fees, hospital superintendent would be directed to report as to accused's condition, and upon the return the District Court should conduct hearing to determine whether accused had recovered sanity and would not be dangerous to himself or others in reasonable future. D.C. Code 1951, §§ 22-1901, 22-2801, 24-301; 18 U.S.C. §§ 1915(d), 2243, 2244. *Tatem v. U.S.*, 275 F.2d 894, 1960 U.S. App. LEXIS 5235 (C.A.D.C. 1960).

In habeas corpus proceeding brought by petitioner claiming right to be released from hospital for the mentally ill, court could not try de novo issue as to whether petitioner had ever been insane, or whether he had recovered his sanity. D.C. Code 1951, § 24-301(g). *O'Beirne v. Overholser*, 180 F.Supp. 572, 1960 U.S. Dist. LEXIS 5317 (D.D.C.1960).

— Sufficiency of evidence, habeas corpus.

Conclusion that petitioner who had been committed to hospital under statute following directed verdict of not guilty by reason of insanity failed to sustain burden of showing entitlement to unconditional release from hospital the superintendent of which had stated both at time of trial and on habeas corpus that he was without mental disorder was not without evidentiary support, in view of conflicting psychiatric testimony. D.C. Code 1961, § 24-301(d). *Miller v. Cameron*, 335 F.2d 986, 1964 U.S. App. LEXIS 5098 (C.A.D.C. 1964).

Evidence disclosed that director of hospital, to which petitioner had been committed following his acquittal by reason of insanity, was not arbitrary in refusing discharge. 18 U.S.C. §§ 3, 2113(a); D.C. Code 1951, § 24-301(d). *Foller v. Overholser*, 292 F.2d 732, 1961 U.S. App. LEXIS 4618 (C.A.D.C. 1961).

Evidence supported finding that inmate, who was seeking release from confinement in men-

tal hospital as insane criminal, was at time of the habeas corpus proceeding suffering from abnormal mental condition and would be dangerous to himself and others if released. D.C. Code 1951, § 24-301(d). *Curry v. Overholser*, 287 F.2d 137, 1960 U.S. App. LEXIS 3233 (C.A.D.C. 1960).

In proceeding brought by one who was confined to mental institution following his acquittal of criminal charge by reason of insanity, to secure his release from institution, District Court, in denying writ, made permissible choice between expert evidence that he was dangerous and other evidence, including testimony of laymen, tending to suggest that he was not. D.C. Code 1951, § 24-301. *Ragsdale v. Overholser*, 281 F.2d 943, 1960 U.S. App. LEXIS 4184 (C.A.D.C. 1960).

Under statute authorizing persons confined to mental institution by reason of having been acquitted of crime on ground of insanity to test legality of their commitments by habeas corpus, certificate of superintendent of mental institution, in form of conclusion, may be disregarded by the district judge if it is not supported by medical recitals which satisfy or persuade him that the conclusion is correct. D.C. Code 1951, § 24-301. *Ragsdale v. Overholser*, 281 F.2d 943, 1960 U.S. App. LEXIS 4184 (C.A.D.C. 1960).

In habeas corpus proceeding by one who had been committed to mental hospital after being found not guilty of robbery by reason of insanity, where superintendent of hospital had refused to certify that petitioner had recovered sanity and would not in reasonable future be dangerous to himself or others, evidence did not warrant release of petitioner despite opinion of two psychiatrists denying present mental disease, where seven psychiatrists agreed that petitioner was a sociopathic personality with dyssocial outlook and would be dangerous to community if released. D.C. Code 1951, § 24-301(d, e, g). *Overholser v. Leach*, 257 F.2d 667, 1958 U.S. App. LEXIS 4536 (C.A.D.C. 1958).

In habeas corpus proceeding by petitioner, who had been committed as an insane person pursuant to verdict, in murder prosecution, of not guilty by reason of insanity, evidence sustained determination that petitioner had not been restored to mental health and justified discharge of writ. D.C. Code 1940, § 24-301; 24 U.S.C. § 211. *Orencia v. Overholser*, 163 F.2d 763, 1947 U.S. App. LEXIS 2309 (1947).

Evidence in habeas corpus proceeding by person committed to hospital for mentally ill after being found not guilty of crime on ground of insanity established that person committed had recovered his sanity and was not likely in reasonably foreseeable future to be dangerous to himself or others by reason of any mental disease or defect. D.C. Code 1961, § 24-301(c,

g). *Robertson v. Cameron*, 224 F. Supp. 60, 1963 U.S. Dist. LEXIS 6409 (D.D.C.1963).

Insanity defense.

Reversible error occurred where defendant's counsel was not notified or furnished results of mental examination of defendant until day of trial and was therefore unable to prepare insanity defense. D.C. Code §§ 24-301(a), 33-424. *United States v. Henry*, 528 F.2d 661, 1976 U.S. App. LEXIS 13310 (C.A.D.C. 1976).

Where record unequivocally established that, after three years of representing defendant, defense counsel concurred with conclusions reached by psychiatrist and judge that defendant was a malingerer and expressed opinion that it was tactically unwise to raise an insanity defense unless he felt he had a chance, defendant was not entitled to reversal of conviction of armed robbery assault with a deadly weapon and carrying a pistol without a license on ground of judicial interference with his defense counsel's attempt to pursue insanity issue. D.C. Code §§ 22-502, 22-2901, 22-3202, 22-3204, 24-301(a). *United States v. Simms*, 463 F.2d 1273, 1972 U.S. App. LEXIS 9318 (C.A.D.C. 1972).

Where indigent defendant in attempting to utilize defense of insanity based on drug addiction was denied even minimal assistance of free subpoena though averments in his motions were not inherently incredible on their face and there was no evidence that averments were untrue or that request was otherwise frivolous, defendant was entitled to new trial after fair opportunity to prepare defense of insanity. 18 U.S.C. § 4244; Fed.Rules Crim.Proc. rules 17(b), 28, 18 U.S.C.; D.C. Code 1961, §§ 21-308, 24-106, 24-301(a). *Brown v. United States*, 331 F.2d 822, 1964 U.S. App. LEXIS 5757 (C.A.D.C. 1964).

Purpose of subsection of District of Columbia Code prohibiting defense of insanity unless accused or his attorney files notice of intention to rely on such defense was to prevent defense being interposed unexpectedly at trial when government was not prepared with evidence to meet it. D.C. Code § 24-301(j). *Marcey v. Harris*, 287 F. Supp. 73, 1968 U.S. Dist. LEXIS 9465 (D.D.C.1968), remanded by 400 F.2d 772, 130 U.S. App. D.C. 301, 1968 U.S. App. LEXIS 6455 (1968).

Armed robbery defendant was not entitled to assert insanity defense; although there had been extensive psychological evaluations to determine defendant's competency to stand trial, no productivity examination was conducted to determine whether defendant's actions on the day of the robbery were the result of mental illness, defendant did not proffer that he had an expert who would testify in support of an insanity defense, request was made the day before jury selection and one week before trial,

and there was no persuasive evidence to dissuade the judge from her previous finding that defendant was malingering. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

Fact that defense counsel stated in his motion to withdraw that defendant falsely accused him of "all kinds" of misconduct did not show that defendant was prejudiced by an alleged conflict between himself and counsel, so as to deprive him of effective assistance in bench trial in which defendant attempted to establish insanity as a defense to stalking, assault with intent to kill while armed, and other offenses; though judge who considered motion was trier of fact, counsel's denial of defendant's allegations was collateral to any defense and therefore did not compromise the insanity defense. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

Petitioner's assertion that counsel was "intolerably deficient" in his pursuit of insanity as a defense to stalking, assault with intent to kill while armed, and other offenses was conclusory and unsubstantiated, so as to obviate the need for an evidentiary hearing on motion that sought post-conviction relief on ground of ineffective assistance of counsel. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

Trial judge was not required to recuse himself after defense counsel stated in his motion to withdraw that defendant falsely accused him of "all kinds" of misconduct, in bench trial in which defendant attempted to establish insanity as a defense to stalking, assault with intent to kill while armed, and other offenses, where nothing counsel told the judge reflected any opinion of the defense. *Malede v. United States*, 767 A.2d 267, 2001 D.C. App. LEXIS 43 (2001).

The District of Columbia does not accept "not guilty by reason of insanity" as a valid plea; rather, the District maintains the long-established distinction between permissible pleas and affirmative defenses such as insanity. D.C. Code 1981, § 24-301(j). *Malone v. United States*, 729 A.2d 888, 1999 D.C. App. LEXIS 120 (1999).

To prevail on insanity defense, defendant was required to prove by preponderance of the evidence that, as result of mental disease or defect, he lacked substantial capacity either to conform his conduct to the requirements of the law or to recognize the wrongfulness of his conduct. D.C. Code 1981, § 24-301(j). *Wilkes v. United States*, 631 A.2d 880, 1993 D.C. App. LEXIS 233 (1993), writ of certiorari denied by 513 U.S. 848, 115 S. Ct. 143, 130 L. Ed. 2d 84, 1994 U.S. LEXIS 5981, 63 U.S.L.W. 3260 (1994).

Defendant's proffer in support of insanity defense failed to show causal relationship between criminal conduct and mental disease,

and thus trial court did not abuse its discretion in refusing to allow such defense. D.C. Code § 24-301(j). *Pegues v. United States*, 415 A.2d 1374, 1980 D.C. App. LEXIS 307 (1980).

In criminal case, trial judge's ruling that unless defendant revealed, pretrial, the nature of his anticipated defense, an affirmative defense could be presented only through defendant's own testimony was outside scope of trial judge's express authority and amounted to usurpation of power, and thus writ of mandamus may properly lie against trial judge's order compelling defense disclosure under threatened sanction of limiting defense testimony. D.C. Code SCR, Criminal Rules, 12.1, 12.2; D.C. Code § 24-301(j). *Bowman v. United States*, 412 A.2d 10, 1980 D.C. App. LEXIS 255 (1980).

Insanity defense is raised where as result of mental disease or defect a defendant lacks substantial capacity either to appreciate criminality of his conduct or to conform his conduct to requirements of law and, "mental retardation" being mental defect capable of affecting both mental processes and behavior controls to extent that defendant in given situation might not be able to appreciate wrongfulness of his conduct or might not be able to conform his conduct to requirements of law, mental retardation is included in insanity defense. D.C. Code § 24-301(d)(1). *United States v. Shorter*, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

Where defendant, indicted for sodomy, assault with dangerous weapon and mayhem, neither raised defense of insanity prior to return of jury verdict of guilty nor brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. D.C. Code §§ 22-502, 22-506, 24-301, 24-301(j). *Hughes v. United States*, 308 A.2d 238, 1973 D.C. App. LEXIS 331 (1973).

Insanity determination.

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. D.C. Code 1961, §§ 21-311, 21-315, 21-326, 24-301(a). *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

Where proposed definition of mental illness for civil commitment purposes had excluded mental deficiency but version which was enacted by Congress included mental deficiency within definition of mental illness, such enactment expressed awareness that mental retardation and mental illness or disease are not mutually exclusive conditions. D.C. Code §§ 21-501 to 21-592, 21-1101 to 21-1123, 24-

301(d). *United States v. Jackson*, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).^{*}

Presence of abnormal mental condition, and extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is matter of law. D.C. Code §§ 21-546, 21-548, 24-301(e). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

A person is "mentally ill" if he suffers from abnormal condition of mind that substantially affects mental or emotional processes and substantially impairs behavioral control. D.C. Code §§ 21-546, 21-548, 24-301(e). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

For purposes of determining criminal responsibility, that is, whether act charged, if committed, was product of mental disease or defect, inquiry is focused on past mental condition, namely at time of offense. D.C. Code § 24-301(a). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Jury has no concern with mental state of defendant at some future time. D.C. Code 1951, § 24-301. *Lyles v. U.S.*, 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

Evidence of mental condition at a given time is relevant to determination of mental condition at another time not unreasonably far removed, and it might be proper to inquire as to probability that as of time of act charged, an accused's mental condition was the same as it was found to be somewhat earlier, or somewhat later, but such rule does not justify judge in warning jury that if they acquit accused who has pleaded insanity they will be releasing a dangerous man to prey upon society. D.C. Code 1951, § 24-301(d, e). *Blunt v. U.S.*, 244 F.2d 355, 1957 U.S. App. LEXIS 3094 (C.A.D.C. 1957).

The court-formulated test of insanity that accused is not criminally responsible if his unlawful act was product of mental disease or mental defect could not be applied retrospectively but only prospectively. D.C. Code 1951, § 24-301; 18 U.S.C. § 4244. *Watson v. U.S.*, 234 F.2d 42, 1956 U.S. App. LEXIS 3664 (C.A.D.C. 1956).

In District of Columbia, formulation of tests of criminal responsibility is entrusted to the courts, and they may adopt changes in such tests retroactively. D.C. Code 1951, § 24-301. *Durham v. U.S.*, 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

In determining whether accused was suffering from diseased or defective mental condition, and whether his act was caused by such condition, jury may consider symptoms, phases, manifestations, testimony of psychiatrists as to nature of the disease or defect, and its range of inquiry may include but is not limited to

whether accused knew right from wrong, whether he acted under compulsion of an irresistible impulse, or had been deprived of or lost the power of his will. D.C. Code 1951, § 24-301. *Durham v. U.S.*, 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

When issue of insanity is raised by introduction of "some evidence" so that presumption of sanity is no longer absolute, trier of fact must weigh the whole evidence, including that supplied by the presumption of sanity, on the issue of capacity in law of accused to commit the crime, and failure so to weigh the whole evidence on such issue is reversible error. D.C. Code 1951, § 24-301. *Durham v. U.S.*, 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

The purpose of statute, providing that whenever prima facie evidence is submitted that accused is insane, the court may cause a jury to be impaneled to inquire into the sanity of accused, is to prevent the infliction of punishment upon a person so lacking in mental capacity as to be unable to understand the nature and purpose of the punishment. D.C. Code 1940, § 24-301. *Neely v. U.S.*, 150 F.2d 977, 1945 U.S. App. LEXIS 2867 (1945).

Whether prima facie evidence is submitted to the court that accused is insane, so as to authorize the impaneling of a jury to inquire into the sanity of accused, is a matter within the sound discretion of the judge, and the exercise of that discretion will not lightly be disturbed. D.C. Code 1940, § 24-301. *Neely v. U.S.*, 150 F.2d 977, 1945 U.S. App. LEXIS 2867 (1945).

A defendant is entitled to verdict of not guilty on ground of insanity, if jury finds that offense charged was insane act by application of any one of three tests as to whether defendant was able to distinguish between right and wrong, able to adhere to right and refrain from doing wrong, or suffered from mental disease or defect which caused criminal act. D.C. Code 1951, § 24-301. *U.S. v. Fielding*, 148 F.Supp. 46, 1957 U.S. Dist. LEXIS 3974 (D.D.C.1957).

Jury instructions.

The district court of the District of Columbia was constitutionally authorized to instruct jury, pursuant to the District of Columbia statute, the defendants bore burden of proving by a preponderance of the evidence their insanity defenses as to nonfederal charges on trial. D.C. Code § 24-301(j); U.S. Const. Amend. 14. *United States v. Caldwell*, 543 F.2d 1333, 1974 U.S. App. LEXIS 5417 (C.A.D.C. 1974), writ of certiorari denied by 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97, 1976 U.S. LEXIS 1234 (1976).

Where offenses with which defendant was charged were allegedly committed at time when the prosecution had the burden of proving criminal responsibility beyond a reasonable

doubt once defendant had raised an insanity defense, where statute was thereafter amended to preclude acquittal on ground of insanity unless insanity was affirmatively established by a preponderance of the evidence, and where defendant raised insanity defense, giving of instruction, over objection, that defendant had burden of establishing his insanity defense by a preponderance of the evidence violated the *ex post facto* clause of the Constitution, despite contention that amendment provided for a mere procedural change. D.C. Code § 24-301(j); U.S. Const. art. 1, § 9, cl. 3. *United States v. Williams*, 475 F.2d 355, 1973 U.S. App. LEXIS 11931 (C.A.D.C. 1973).

In prosecution for murder, instruction that if verdict of not guilty by reason of insanity was returned defendant would be committed to mental hospital until such time as it was established that he was no longer insane, was not objectionable for failure to add that he would be kept in hospital until he would not in reasonable future be dangerous to himself or others. D.C. Code 1951, § 24-301. *Starr v. U.S.*, 264 F.2d 377 (C.A.D.C. 1958).

Statement by trial judge that doctor testified that on prior occasion he found no mental disorder whatever in defendant, and that defendant was a man of average intelligence, was not reversible error, though made in connection with statement to jury that if defendant should be acquitted by reason of insanity, he would be committed to a mental institution, where statement as to testimony of doctor was a remark in single sentence in middle of long charge, and trial judge did not relate testimony of doctor to time of trial or to any possible future time. D.C. Code 1951, § 24-301. *Lyles v. U.S.*, 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

Instruction that if defendant is found not guilty on ground of insanity, it then becomes duty of court to commit him to hospital, where he will remain until he is cured, and it is deemed safe to release him, and that when such time arrives, he will be released and will suffer no further consequences from his offense, was not reversibly erroneous. D.C. Code 1951, § 24-301. *Lyles v. U.S.*, 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

Where defendant pleads not guilty by reason of insanity, jury has right to know meaning of verdict of not guilty by reason of insanity as accurately as it knows by common knowledge the meaning of verdict of guilty and verdict of not guilty. D.C. Code 1951, § 24-301. *Lyles v. U.S.*, 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

When instruction is given jury as to effect of verdict of not guilty by reason of insanity, jury should simply be informed that such verdict means that accused will be confined in hospital for mentally ill until superintendent has certi-

fied, and court is satisfied, that accused has recovered his sanity and will not in reasonable future be dangerous to himself or to others, in which event and at which time court shall order his release either unconditionally or under such conditions as court may see fit. D.C. Code 1951, § 24-301. *Lyles v. U.S.*, 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

Whenever defense of insanity is fairly raised, trial judge should instruct jury as to legal meaning of verdict of not guilty by reason of insanity. D.C. Code 1951, § 24-301. *Lyles v. U.S.*, 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

If it affirmatively appears on record that defendant, who pleaded not guilty by reason of insanity, did not want instruction as to effect of verdict of not guilty by reason of insanity, Court of Appeals will not regard failure of trial court to give such instruction as grounds for reversal. D.C. Code 1951, § 24-301. *Lyles v. U.S.*, 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

Where, in criminal trial involving question of sanity of defendant at time of commission of offense, proper evidential foundation is laid, trial court should permit jury to consider right or wrong and irresistible impulse criteria in resolving ultimate issue whether accused acted because of mental disorder. D.C. Code 1951, § 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

In aid of determination of question whether accused acted because of mental disorder in committing crime, court may permit jury to consider whether accused understood nature of what he was doing, and whether his actions were due to failure, because of mental disease or defect, properly to control his conduct. D.C. Code 1951, § 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

In prosecution for housebreaking, wherein judge told jury that hospital Acting Superintendent had advised court that accused was found competent to stand trial and assist in his own defense, and after stating that court would commit accused to hospital if he were found not guilty by reason of insanity, judge added that accused would remain there until determined to be "of sound mind" by hospital authorities and that "if the authorities adhered to their last opinion on this point, he will be released very shortly", latter statement was highly prejudicial since it implied a warning that dire consequences might result from finding that accused was not guilty by reason of insanity. 18 U.S.C. § 4244; D.C. Code 1951, § 24-301. *Durham v. U.S.*, 237 F.2d 760, 1956 U.S. App. LEXIS 2962 (C.A.D.C. 1956).

When accused person has pleaded insanity, counsel may and judge should inform jury that if he is acquitted by reason of insanity he will be

presumed to be insane and may be confined in hospital for insane as long as public safety and welfare require. D.C. Code 1951, § 24-301; 24 U.S.C. § 211. *Taylor v. U.S.*, 222 F.2d 398, 1955 U.S. App. LEXIS 3829 (C.A.D.C. 1955).

Whenever there is some evidence that the accused suffered from a diseased or defective mental condition at the time the unlawful act was committed, trial court must provide jury with guides for determining whether accused can be held criminally responsible. D.C. Code, 1951, § 24-301. *Durham v. U.S.*, 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

Instructions to jury relative to criminal responsibility must in substance advise jury that they may find defendant guilty only if they find, beyond reasonable doubt, from evidence and from facts fairly deducible, (1) that defendant was not suffering from diseased or defective mental condition at time of the act, or (2) that the act was not the result of such condition. D.C. Code 1951, § 24-301. *Durham v. U.S.*, 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

Upon request, trial court must instruct jury on any lesser included offense for which there is evidentiary basis, when all elements of lesser offense are within greater offense. *Smith v. United States*, 686 A.2d 537, 1996 D.C. App. LEXIS 259 (1996), writ of certiorari denied by 522 U.S. 839, 118 S. Ct. 115, 139 L. Ed. 2d 67, 1997 U.S. LEXIS 5021, 66 U.S.L.W. 3257 (1997).

In insanity phase of prosecution for first-degree murder, armed robbery and sodomy, giving standard jury instruction that defendant would be entitled to a hearing within 50 days of a verdict acquitting by reason of insanity and that such hearing could result in his release from custody was not error, even though defendant had previously sought to waive his right to such a hearing, apparently in order to avoid issuance of such instruction. D.C. Code 1981, § 24-301(d), (d)(2). *Adams v. United States*, 502 A.2d 1011, 1986 D.C. App. LEXIS 261 (1986).

In prosecution for first-degree murder, felony-murder and rape wherein defendant raised insanity defense, it was proper for trial court to advise jury that defendant had to prove his insanity by preponderance of the evidence. D.C. Code 1973, § 24-301(j). *Doepel v. United States*, 434 A.2d 449, 1981 D.C. App. LEXIS 345 (1981), writ of certiorari denied by 454 U.S. 1037, 102 S. Ct. 580, 70 L. Ed. 2d 483, 1981 U.S. LEXIS 4463, 50 U.S.L.W. 3376 (1981).

Powers and duties of judiciary.

In considering either a hospital-initiated or a patient-initiated request for the conditional release of a patient in the custody of a mental hospital after being acquitted of a criminal offense by reason of insanity, the district court is obligated, under District of Columbia law, to

make its own independent judicial determination regarding the patient's dangerousness. *United States v. Hinckley*, 346 F.Supp.2d 155, 2004 U.S. Dist. LEXIS 23724 (2004).

The District of Columbia Superior Court does not have the authority to instruct Saint Elizabeth's Hospital to follow a particular treatment regimen prior to the hospital's certification to the Court for conditional or unconditional release of an acquittee. *United States v. Wise*, 120 WLR 85 (Super. Ct. 1992).

When the evidence suggests a substantial question about the defendant's mental condition at the time of the crime, the trial court must make three separate determinations, in the following order: (1) whether the defendant is competent to stand trial; (2) if so, whether he or she, based on present mental capacity, can intelligently and voluntarily waive the insanity defense and has done so; (3) if not, whether the court should sua sponte impose the insanity defense based on evidence of the defendant's mental condition at the time of the alleged crime. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

Trial court's failure prior to sentencing to conduct *Freundak* inquiry into whether defendant had intelligently and voluntarily waived insanity defense to charges arising from stabbing of his mother was not abuse of discretion, though there were many hints of defendant's possible mental illness, where information regarding defendant's mental condition was conflicting. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

Trial court was required at sentencing to conduct full *Freundak* inquiry into whether defendant voluntarily and intelligently waived insanity defense to charges arising from stabbing of his mother, where report received from psychologist at sentencing and a colloquy with defendant raised a substantial question in trial judge's mind regarding defendant's mental capacity, and defendant's previous behavior before and during trial had hinted at mental illness. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

Section places primary responsibility upon trial court, not the doctors, to balance the competing interests of the acquittee's liberty and the community's safety. The fulcrum of this balance is the court's determination of the acquittee's dangerousness *vel non* in the reasonable future under the proposed conditions of release. *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984); *United States v. Gallo*, 117 WLR 2081 (Super. Ct. 1989).

Presumptions.

When lack of mental capacity is raised as a defense to a charge of crime, the law presumes that the defendant is sane, but as soon as some evidence of mental disorder is introduced, san-

ity must be proved beyond a reasonable doubt as part of prosecution's case. D.C. Code 1951, § 24-301. *Durham v. U.S.*, 214 F.2d 862, 1954 U.S. App. LEXIS 3901 (C.A.D.C. 1954).

Statutory presumption of mental illness and dangerousness applied to defendant found not guilty by reason of insanity was not manifest injustice, though defendant had been committed for maximum time he would have had to serve in prison for underlying crime. D.C. Code 1981, § 24-301(e); U.S. Const. Amends. 5, 14. *Reese v. United States*, 614 A.2d 506, 1992 D.C. App. LEXIS 231 (1992).

In prosecution for offense committed while defendant was on conditional release from hospital to which he had been committed after being found not guilty by reason of insanity, jury could presume that defendant was still insane when he committed charged offense, but presumption was not conclusive and jurors should consider previous judgment of insanity along with all other evidence bearing upon question of whether defendant was suffering from mental disease or defect as of date of crime charged, and, if defendant met his burden of showing that he was more likely insane than not, jurors should bring in verdict of not guilty by reason of insanity, but otherwise jury should bring in verdict of guilty of offense found proved beyond reasonable doubt. D.C. Code § 24-301(j). *Gilbert v. United States*, 395 A.2d 1, 1978 D.C. App. LEXIS 361 (1978).

There is a statutorily-imposed presumption of dangerousness arising from an acquittal by reason of insanity, which the acquittee must overcome in order to secure release. *United States v. Lightfoot*, 119 WLR 1845 (Super. Ct. 1991).

Psychiatric examinations.

District court for the District of Columbia has authority to order a report on a defendant's competency to stand trial and on his mental responsibility at time of the alleged offense; so to, may the court discharge its responsibility by pursuing specific expert evaluations of the quality of defendant's decision to oppose the insanity defense. D.C. Code § 24-301(a). *United States v. Wright*, 627 F.2d 1300, 1980 U.S. App. LEXIS 18445 (C.A.D.C. 1980).

Denial of presentence motion to withdraw guilty plea was abuse of discretion where defendant initially intended to rely on an insanity plea supported by hospital record and entered plea only after psychiatrist filed revised report indicating that defendant was without mental disease and in view of fact that he would soon be ineligible for Youth Corrections Act treatment but subsequent medical center report counseled against YCA treatment because of severity of defendant's mental illness; medical center report revealed new evidence of insanity, in face of which defendant should have been

released from his earlier decision. 18 U.S.C. §§ 5005-5026, 5010(e); Fed. Rules Crim. Proc. rule 32(d), 18 U.S.C.; D.C. Code § 24-301(a). *United States v. Morgan*, 567 F.2d 479, 1977 U.S. App. LEXIS 11467 (C.A.D.C. 1977).

In case of court-ordered psychiatric examinations the best safeguard against unfairness is the establishment of written procedures by which government psychiatric facilities may obtain all relevant information from both sides; published rules offer notice, promote uniformity of practice, provide a standard by which individual conduct may be measured and tend to be fairer than informal procedures simply by virtue of the attention given to their formulation. D.C. Code § 24-301(a). *United States v. Morgan*, 567 F.2d 479, 1977 U.S. App. LEXIS 11467 (C.A.D.C. 1977).

Record on appeal from denial of motion to withdraw guilty pleas, raising serious unanswered questions about whether defendant's decision to plead was materially affected by, inter alia, defense counsel's failure to seek an independent mental examination of defendant, or the influence of ex parte communications between U.S. Attorney and examining staff or psychiatrists' failure to file promptly his letters or court's failure to inquire into circumstances surrounding the examination was inadequate for proper consideration of district court's reasons for denying the motion. D.C. Code §§ 23-1303(h)(4), 24-301, 24-301(a). *United States v. Morgan*, 482 F.2d 786, 1973 U.S. App. LEXIS 8456 (C.A.D.C. 1973).

Decision of trial judge to proceed with trial on the merits without ordering a commitment of defendant for competency observation was not abuse of discretion in absence of any objection or motion from defense counsel and in view of simultaneous expression of willingness to try, through bifurcation, any insanity defense that might subsequently appear appropriate. D.C. Code § 24-301(a). *United States v. Bradley*, 463 F.2d 808, 1972 U.S. App. LEXIS 9999 (C.A.D.C. 1972).

Where defendant who allegedly had history of drug addiction was opposed to pretrial motion for mental examination and, on interrogation by court with questions designed to elicit degree of his understanding of his legal circumstances as well as his position on the motion, his responses to former were clear and his opposition to commitment was steadfast, trial court did not err in denying motion. D.C. Code § 24-301. *United States v. Collins*, 433 F.2d 550, 1970 U.S. App. LEXIS 7539 (C.A.D.C. 1970).

Mental hospital's examination of defendant properly extended to issues of mental responsibility even though order referred only to competency to stand trial. D.C. Code § 24-301. *United States v. Ashe*, 427 F.2d 626, 1970 U.S. App. LEXIS 9300 (C.A.D.C. 1970).

Even if petitioner was constitutionally entitled to further protection of his rights during hospital staff conference held in connection with a pre-indictment mental examination requested by petitioner, it could not be said, in absence of a full record of trial, that presence of petitioner's counsel, as opposed to some alternative device such as recording some or all parts of conference, was an appropriate remedy, so that mandamus to compel an order against hospital to permit presence of petitioner's counsel was not available. D.C. Code §§ 4-119, 24-301(a, b); U.S. Const. Amendments. 5, 6. *Thornton v. Corcoran*, 407 F.2d 695, 1969 U.S. App. LEXIS 9481 (C.A.D.C. 1969).

When a criminal defendant is reasonably suspected by trial court of being an addict, trial court should exercise his discretion and order competency examination of defendant. D.C. Code § 24-301. *Grennett v. United States*, 403 F.2d 928, 1968 U.S. App. LEXIS 6882 (C.A.D.C. 1968).

Where offense was committed less than one year before hearing on government's motion for mental examination and defendant had requested bifurcated trial and had filed notice of insanity defense, court was justified in invoking provisions relating to mental examination of accused. D.C. Code § 24-301(a, j). *Marcey v. Harris*, 400 F.2d 772, 1968 U.S. App. LEXIS 6455 (C.A.D.C. 1968).

Notwithstanding the plainly unsatisfactory nature of reports concerning mental condition of defendant, because of defendant's refusal to cooperate in any further psychiatric examinations it would be unfair to defendant and perhaps a futile exercise to remand case for a third time, and Court of Appeals affirmed the maximum sentence imposed by trial judge following robbery conviction. Fed.Rules Crim.Proc. rule 39(b)(1), 18 U.S.C.; Fed.Rules Civ.Proc. rule 75(h), 18 U.S.C.; D.C. Code 1961, § 24-301. *Leach v. United States*, 353 F.2d 451, 1965 U.S. App. LEXIS 4082 (C.A.D.C. 1965), writ of certiorari denied by 383 U.S. 917, 86 S. Ct. 911, 15 L. Ed. 2d 672, 1966 U.S. LEXIS 2315 (1966).

Notwithstanding that about two weeks after trial and seven months after defendant's erroneously denied pretrial motion for mental examination psychiatrist examined defendant in cell block and reported that defendant was then competent and presumably had been at trial, but that he was unable to reach conclusion as to dates of alleged offenses, at least time and facilities normally available for pretrial examinations were to be made available following reversal of conviction, and prospective hearing was required. D.C. Code 1961, § 24-301(a). *Cannady v. United States*, 351 F.2d 817, 1965 U.S. App. LEXIS 4909 (C.A.D.C. 1965).

Where allegations of defendant's moving papers were unquestioned by government or court, they were to be taken as true for purpose

of ruling on motions for mental examination and for subpoena of psychiatrist. 18 U.S.C. § 4244; Fed.Rules Crim.Proc. rule 17(b), 18 U.S.C.; D.C. Code 1961, § 24-301(a). *Brown v. United States*, 331 F.2d 822, 1964 U.S. App. LEXIS 5757 (C.A.D.C. 1964).

A written motion on morning of trial for a mental examination of defendant based on allegations that defendant had displayed to counsel certain letters which raised inquiry with respect to his mental situation, and based on allegation that counsel had learned that defendant was an epileptic and exhibited unexplained and repeated criminal activities was, under the circumstances, adequate and timely, and denial thereof was prejudicial error. D.C. Code 1961, § 24-301. *Mitchell v. United States*, 316 F.2d 354, 1963 U.S. App. LEXIS 6205 (C.A.D.C. 1963).

Although a trial judge has some discretion in denying a motion for a mental examination as not timely, if counsel learns of defendant's alleged symptoms on day the trial is scheduled to begin, a motion submitted at that time cannot be denied as late. D.C. Code 1961, § 24-301. *Mitchell v. United States*, 316 F.2d 354, 1963 U.S. App. LEXIS 6205 (C.A.D.C. 1963).

Purpose of ordering a mental examination for a defendant is to get evidence on whether he is or is not competent to stand trial, and another purpose is to get evidence on whether, if there is a trial, the jury should be instructed on insanity and criminal responsibility. D.C. Code 1961, § 24-301. *Mitchell v. United States*, 316 F.2d 354, 1963 U.S. App. LEXIS 6205 (C.A.D.C. 1963).

On a motion for an order directing a mental examination, defendant is not required to produce, in order to get the examination, enough evidence to prove that he is incompetent or irresponsible. D.C. Code 1961, § 24-301. *Mitchell v. United States*, 316 F.2d 354, 1963 U.S. App. LEXIS 6205 (C.A.D.C. 1963).

Inmate who had been confined for more than one year without an independent examination as to his mental health by an expert appointed by the district court was entitled, in connection with his petition for release, as a matter of right, to such independent examination to test findings and conclusions of the hospital staff where he was confined. D.C. Code 1961, § 24-301. *Watson v. Cameron*, 312 F.2d 878, 1962 U.S. App. LEXIS 3295 (C.A.D.C. 1962).

Psychiatrist's reports on whether defendant was mentally competent to stand trial properly included evaluation of defendant's mental condition at time crimes were committed. 18 U.S.C. § 4244; D.C. Code 1951, § 24-301(a, b). *Overholser v. Lynch*, 288 F.2d 388, 1961 U.S. App. LEXIS 5476 (C.A.D.C. 1961).

Nature of crime of sodomy, with which accused was charged, was not sufficient alone, to require the District Court, before accepting

guilty plea, to order a mental examination of accused, although court could properly consider nature of crime in that connection, and where there was no indication by prosecuting attorney that accused might be a sexual psychopath, and no request for a mental examination was made by prosecution or accused, convictions could not be set aside in collateral proceeding, such as *coram nobis*, because of court's failure to order examination on its own motion. D.C. Code 1951, §§ 22-3503(1), 22-3504 et seq., 24-301; 18 U.S.C. § 2255. *Carter v. U.S.*, 283 F.2d 200, 1960 U.S. App. LEXIS 3704 (C.A.D.C. 1960).

Where the prosecuting attorney moved for a complete and thorough mental examination of the accused, but district court's order upon the motion required only such examination as was necessary to permit formulation of an opinion as to whether defendant was presently of unsound mind or mentally incompetent so as to be unable to understand the proceeding against him or properly to assist in his own defense, the complete and thorough type of examination required for a proper determination of the issue of responsibility would be deemed never made because it was not ordered as requested in the prosecutor's pretrial motion, and therefore defendant's conviction would be reversed and he would be granted a new trial. D.C. Code 1951, § 24-301. *Winn v. U.S.*, 270 F.2d 326, 1959 U.S. App. LEXIS 3514 (C.A.D.C. 1959).

A prosecutor who knows that the accused's mental state at the time of the crime will be the critical issue at trial has an obligation to see that any pretrial mental examination of the accused that may be ordered be broad enough to cast light on that issue, and such course is required not only to protect the rights of the accused, but also to protect society's interest in hospitalizing the accused, if his violent acts sprang from mental disorder, so that he will not be released, as he would be after completion of a prison sentence, without medical assurance that he is not likely to be dangerous to himself or others in the reasonably foreseeable future. D.C. Code 1951, § 24-301. *Winn v. U.S.*, 270 F.2d 326, 1959 U.S. App. LEXIS 3514 (C.A.D.C. 1959).

There is a vast difference between that mental state which permits an accused to be tried and that which permits him to be held responsible for a crime, and in view of fact that an examination made for the purpose of determining competency to stand trial requires less than an examination designed to determine sanity for the purpose of criminal responsibility, it is not to be assumed that a psychiatrist who has been ordered to prepare an opinion as to man's trial competency will conduct a type of examination which is necessary to provide the trier of facts with information essential for a proper determination of criminal responsibility. D.C. Code 1951, § 24-301. *Winn v. U.S.*, 270 F.2d

326, 1959 U.S. App. LEXIS 3514 (C.A.D.C. 1959).

Denial of motion of one of the two defendants jointly indicted on charge of killing another in perpetrating robbery for a mental examination was not error, where moving defendant did not make prima facie showing of mental incapacity. D.C. Code 1940, §§ 22-2401, 24-301. *Wheeler v. U.S.*, 165 F.2d 225, 1947 U.S. App. LEXIS 2054 (1947).

In proceedings on hospital's proposal for expansion of conditional release of patient committed following verdict of not guilty by reason of insanity of attempted assassination of President of United States and related charges, district court adopted proposal of hospital, to extent that proposal called for three initial unsupervised visits to patient's parents' home, each of three nights in duration, after each and all of which hospital would conduct assessment of success, and, with subsequent recommendation of patient's treatment team and approval of hospital review Board, additional four visits of up to four nights in duration. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

Where accused raised defense of insanity, so that it was necessary to conduct an examination of his person, there was nothing arbitrary or unconstitutional in committing him for reasonable length of time as provided by statute to mental hospital in order that examination might be conducted and accused was not thereby deprived of his right to bail. D.C. Code 1961, § 24-301(a); U.S. Const. Amend. 8. *Battle v. Cameron*, 260 F. Supp. 804, 1966 U.S. Dist. LEXIS 7358 (D.D.C.1966).

A "productivity examination" is a psychiatric examination which inquires into the defendant's sanity at the time he committed the offense, whereas a "competency examination" looks to whether the defendant is competent to stand trial, understand the proceedings against him, and effectively consult with counsel concerning the proceedings against him. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

Trial judge did not err in denying defendant's motion for a mental examination in his prosecution for grand larceny and unauthorized use of motor vehicles, despite defendant's momentary refusal to be present at his own trial and his extensive criminal record, which included six felony convictions. D.C. Code 1981, § 24-301; §§ 22-2201, 22-2204, 22-2205 (repealed). *Holt v. United States*, 486 A.2d 705, 1985 D.C. App. LEXIS 306 (1985).

Defendant was not deprived of due process by failure of trial court to order a second mental examination where case was not one in which defendant faced his trial with a history of mental illness or where disturbing factors concerning defendant's mental condition surfaced

immediately before trial. D.C. Code § 24-301(a); U.S. Const. Amend. 14. *Bennett v. United States*, 400 A.2d 322, 1979 D.C. App. LEXIS 353 (1979).

Mere difficulty of communication between a defendant and his attorney is not in and of itself enough to require a competency examination. D.C. Code § 24-301(a). *Bennett v. United States*, 400 A.2d 322, 1979 D.C. App. LEXIS 353 (1979).

Motion for mental examination is made on adequate averment, not on counsel's belief, however sincere, that certain undisclosed facts lead him, or a psychiatrist, or a social psychologist, to suspect examination is required. 18 U.S.C. § 3006A(e); D.C. Code § 24-301(a); D.C. Code General Sessions Court Rules, Criminal Division rule 14(c). *Brown v. United States*, 244 A.2d 487, 1968 D.C. App. LEXIS 184 (App. 1968).

Purpose.

In light of legislative history, intent underlying statute which requires indefinite commitment of any person who is acquitted of an offense solely on the ground of insanity appears to have been to insure that persons acquitted by reason of insanity are automatically committed for the protection of the public and their own protection and rehabilitation. D.C. Code § 24-301(d). *United States v. Jackson*, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

Purpose of statute requiring court approval for release of inmate of mental hospital who has been confined following acquittal on criminal charges because of mental illness is to assure that members of the exceptionally dangerous class are kept under hospital restraint until the district court approves a relaxation of that restraint and to assure the treatment and cure given to the mentally ill afford reasonable assurances for the public safety. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Purpose of statute providing for mandatory commitment of person acquitted on ground that he was insane at time of commission of offense and prescribing release standards was to achieve balance of interest between public and person charged with crime by insuring that in every case where person committed crime as result of mental disease or defect, such person should be given period of hospitalization to guard against imminent recurrence of some criminal act. D.C. Code § 24-301(a, d, e). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Principal concern of statute governing release of persons committed after being found not guilty by reason of insanity is for procedures to protect public from premature release of dangerous persons. D.C. Code 1961, § 24-

301(d, e). *Green v. United States*, 349 F.2d 203, 1965 U.S. App. LEXIS 5027 (C.A.D.C. 1965).

Purpose of statute pertaining to commitment to hospital of an accused who is mentally incompetent to stand trial is to prescribe procedure for determining whether an accused can understand the proceedings against him and properly assist in his defense and, in event he cannot, to provide for his confinement in a hospital instead of a jail until he can. D.C. Code 1951, § 24-301 (a). *Williams v. Overholser*, 259 F.2d 175, 1958 U.S. App. LEXIS 4714 (C.A.D.C. 1958).

Purpose of statutory requirement that superintendent of hospital certify that person seeking release has recovered his sanity is to safeguard public against release of insane criminals who might possibly repeat their depredations. D.C. Code 1951, § 24-301 (d). *O'Beirne v. Overholser*, 180 F.Supp. 572, 1960 U.S. Dist. LEXIS 5317 (D.D.C.1960).

Purpose of statute making it mandatory for court to commit to a mental hospital any defendant in a criminal case who is found not guilty on ground of insanity, and placing certain safeguards against release of such person from mental hospital after his commitment thereto, is to protect public and discourage unfounded pleas of insanity and statute must be construed in a manner to best effectuate those objectives. D.C. Code 1951, § 24-301(d, e). In re *Rosenfield*, 157 F.Supp. 18, 1957 U.S. Dist. LEXIS 2442 (D.D.C.1957).

Exclusively remedial and protective goals of statute providing for commitment to mental hospital of persons acquitted of criminal charges by reason of insanity demonstrate that punitive rationale has no part in such commitment. D.C. Code 1973, § 24-301(d). *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Purpose of statute providing for commitment of defendant acquitted by reason of insanity is twofold, i.e., to provide defendant with treatment and to protect the public. D.C. Code § 24-301(d)(1). *United States v. Shorter*, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

Underlying policy of statute governing commitment and release of persons found not guilty of crime by reason of insanity is to provide treatment and cure for individual in manner which affords reasonable assurance of public safety. D.C. Code § 24-301(b, d, e). *United States v. Charnizon*, 232 A.2d 586, 1967 D.C. App. LEXIS 186 (App. 1967).

Release from hospital.

— Conditional release from hospital.

Off-grounds, therapeutically approved, supervised outing for insanity acquittee, in cus-

tody of hospital personnel, was not "conditional release" requiring court approval; rather, conditional release would occur only upon acquittee's release from hospital's restraint and guard. D.C. Code 1981, § 24-301(e). *Hinckley v. United States*, 163 F.3d 647, 1999 U.S. App. LEXIS 461 (C.A.D.C. 1999).

Insanity acquittee who is "conditionally released," within meaning of statute governing eligibility for release, is no longer confined nor in custody of hospital. D.C. Code 1981, § 24-301(e). *Hinckley v. United States*, 163 F.3d 647, 1999 U.S. App. LEXIS 461 (C.A.D.C. 1999).

Fact that insanity acquittee's treatment team unanimously recommended his conditional release from hospital was insufficient to overcome deliberative process privilege as to predecisional deliberations of hospital review board which reviewed, and denied, acquittee's request for such release. *Hinckley v. United States*, 140 F.3d 277, 1998 U.S. App. LEXIS 7390 (C.A.D.C. 1998).

Evidence concerning extremely short period of time during which patient who had been committed to hospital after being acquitted of rape and murder by reason of insanity had been without medication, apparent haste to subject him to psychological testing and the inner turmoil still reflected therein and patient's elopement from hospital shortly after being told to assume a great deal of responsibility for his own future raised sufficient questions about patient's mental stability and adequacy of hospital's investigation into his mental status to support trial judge's denial of conditional release which had been recommended by the hospital. D.C. Code § 24-301(e). *United States v. Ecker*, 479 F.2d 1206, 1973 U.S. App. LEXIS 9735 (C.A.D.C. 1973).

In determining whether patient who has been committed to hospital after being acquitted of crime by reason of insanity should be given conditional release from hospital, hospital and trial court, which must approve hospital's recommendation for such release, should elucidate with specificity those factors which weigh heavily in their decisions. D.C. Code § 24-301(e). *United States v. Ecker*, 479 F.2d 1206, 1973 U.S. App. LEXIS 9735 (C.A.D.C. 1973).

Theoretical limits of prison term to which patient might have been sentenced for murder had he not been acquitted by reason of insanity were of no relevance in determining whether patient should have been conditionally released from hospital to which he had been committed following his acquittal. D.C. Code § 24-301. *United States v. Ecker*, 479 F.2d 1206, 1973 U.S. App. LEXIS 9735 (C.A.D.C. 1973).

Noncompliance with conditions of release from hospital by patient who had been committed there after having been found not guilty of robbery by reason of insanity was significant

but was not the sole or ultimate consideration in determining whether to revoke conditional release; findings as to his mental condition and dangerousness were required. D.C. Code § 24-301(d, e). *Friend v. United States*, 388 F.2d 579, 1967 U.S. App. LEXIS 4145 (C.A.D.C. 1967).

Federal district court which had been asked to reimpose complete restriction on patient who had been conditionally released from hospital to which he had been committed after being found not guilty of robbery by reason of insanity was required to make independent judicial determination. D.C. Code § 24-301(d, e). *Friend v. United States*, 388 F.2d 579, 1967 U.S. App. LEXIS 4145 (C.A.D.C. 1967).

Order for conditional release of defendant who had been committed to mental hospital on acquittal of offense by reason of insanity could be revoked only by court which granted conditional release and only after full hearing. D.C. Code 1961, § 24-301 and (e). *Darnell v. Cameron*, 348 F.2d 64, 1965 U.S. App. LEXIS 5418 (C.A.D.C. 1965).

Record failed to establish that district court abused its discretion in denying application for conditional release, under statute governing release of one committed to mental institution after being found not guilty of crime by reason of insanity, based on certificate of superintendent of hospital in which applicant was confined. D.C. Code 1961, § 24-301(e). *Durham v. U.S.*, 308 F.2d 332, 1962 U.S. App. LEXIS 4567 (C.A.D.C. 1962).

Under statute governing conditional release of persons who have been committed to mental hospital after acquittal of crime by reason of insanity, to order conditional release upon a challenged certification court must conclude individual has recovered sufficiently so that under proposed conditions, or under conditions which statute empowers court to impose, such person will not in the reasonable future be dangerous to himself or others. D.C. Code 1951, § 24-301 (d, e). *Hough v. U.S.*, 271 F.2d 458, 1959 U.S. App. LEXIS 3367 (C.A.D.C. 1959).

Although statute respecting release of persons committed to mental hospitals after acquittal by reason of insanity does not speak of temporary release from hospital, its purpose is to assure that members of exceptional class be kept under hospital restraint until District Court, in exercise of a discretion reviewable by Court of Appeals, approves relaxation of that restraint. D.C. Code 1951, § 24-301(d, e). *Hough v. U.S.*, 271 F.2d 458, 1959 U.S. App. LEXIS 3367 (C.A.D.C. 1959).

Where hospital authorities have decided that a patient committed to the hospital after acquittal by reason of insanity has reached stage where temporary leave from hospital is necessary and proper, authorities should certify that fact to District Court and obtain an appropriate order. D.C. Code 1951, § 24-301(d, e). *Hough v.*

U.S., 271 F.2d 458, 1959 U.S. App. LEXIS 3367 (C.A.D.C. 1959).

In proceedings on hospital's proposal for expansion of conditional release of patient committed following verdict of not guilty by reason of insanity of attempted assassination of President of United States and related charges, a preponderance of the evidence supported the proposition that patient would not, in the reasonable future, be a danger to himself or to others under reasonable conditions of expanded release; there was evidence of patient's empathy and compassion for his family members over the past year, his increased openness with his treaters, his ability generally to cope with the fluctuations in his romantic relationships without decompensating, and his demonstrated ability to cope with major, life-altering stressors, such as the loss of his father. *United States v. Hinckley*, 625 F.Supp.2d 3, 2009 U.S. Dist. LEXIS 50255 (2009).

Mental patient, who was committed to hospital upon jury finding of not guilty, by reason of insanity, of attempted assassination of President of the United States, would be allowed an expansion of his limited conditional release to his parents' community under the supervision of his mother from a maximum of four nights or 100 hours to six visits of two weeks and one visit lasting as long as one month; patient, whose psychotic disorder, major depression, and narcissistic personality disorder were in remission, had exhibited no evidence of delusional thinking for approximately sixteen years, no evidence of obsessive conduct for at least nine years, and no violent behavior nor attempted suicide in over 20 years. *United States v. Hinckley*, 493 F.Supp.2d 65, 2007 U.S. Dist. LEXIS 44041 (2007).

In proceedings on hospital's proposal for expansion of conditional release of patient committed following verdict of not guilty by reason of insanity of attempted assassination of President of United States and related charges, district court expressly approved, as proper goals of patient's unsupervised visits to his parents' home, such therapeutically directed and beneficial activities as would assist patient in acclimating himself to world outside hospital, including walking around his parents' neighborhood, gardening, shopping, or cooking. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In proceedings on hospital's proposal for expansion of conditional release of patient committed following verdict of not guilty by reason of insanity of attempted assassination of President of United States and related charges, district court declined to adopt, as prematurely advanced, those portions of hospital's proposal calling for incorporation into certain of patient's permitted unsupervised visits to his parents' home of activities which were "transi-

tional" in nature, such as obtaining driver's license, seeking job, or otherwise obtaining vocational assistance. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In proceedings on hospital's proposal for expansion of conditional release of patient committed following verdict of not guilty by reason of insanity of attempted assassination of President of United States and related charges, district court declined to restrict patient's unsupervised visits to his parents' home to particular days of week or times of day, but rather left timing of visits to discretion of hospital, limited by all other requirements of the district court. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

Preponderance of evidence in proceedings on hospital's proposal for expansion of conditional release of patient committed following verdict of not guilty by reason of insanity of attempted assassination of President of United States and related charges, including testimony of hospital and government psychiatric expert witnesses, established that patient did not pose danger to himself or other under conditions embodied in hospital's proposal and included in order of district court. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

Evidence in proceedings on hospital's proposal for expansion of conditional release of patient committed following verdict of not guilty by reason of insanity of attempted assassination of President of United States and related charges established that unsupervised visits by patient to his parents' community designed to enable patient to integrate himself into that community were premature, and that visits should at present be restricted to "change of venue" outings. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In proceedings on a hospital-initiated or patient-initiated request for conditional release of a patient committed to a hospital following a verdict in a criminal trial of not guilty by reason of insanity, the district court must independently weigh the evidence and decide for itself the ultimate question whether if released under appropriate conditions the patient will not in the reasonable future be dangerous to himself or others; the court must take care, however, to base any denial of release on the evidence itself, and not substitute its own opinion for the evidence presented by the parties. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In receiving and considering the evidence in proceedings on a hospital-initiated or patient-initiated request for conditional release of a patient committed to a hospital following a verdict in a criminal trial of not guilty by

reason of insanity, a court is not required to accept the opinion of any expert witness, or even the unanimous opinion of all the experts, but must consider all relevant evidence including the patient's hospital file, the court files and records in the case, and whatever illumination is provided by counsel. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In proceedings on a hospital-initiated request for conditional release of a patient committed to a hospital following a verdict in a criminal trial of not guilty by reason of insanity, the court may modify or expand upon the conditions proposed by the hospital. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

If the evidence in proceedings on a hospital-initiated or patient-initiated request for conditional release of a patient committed to a hospital following a verdict in a criminal trial of not guilty by reason of insanity shows by a preponderance of the evidence that the patient will not be a danger under the proposed or other reasonable conditions of release, then the court must grant the petition for conditional release. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In order to grant conditional release to a patient committed to a hospital following a verdict in a criminal trial of not guilty by reason of insanity, the court must determine that the patient, under the proposed conditions, will not in the reasonable future be dangerous to himself or others. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In considering either a hospital-initiated or a patient-initiated request for conditional release of a patient committed to a hospital following a verdict in a criminal trial of not guilty by reason of insanity, the function of the court is to determine whether the facts as shown by the evidence offered measure up to the statutory standards for release. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

Hospital's proposal for the conditional release of a patient committed following a verdict in a criminal trial of not guilty by reason of insanity should only be approved if the evidence shows that the proposed conditional release is appropriate under the standards set forth in the statute by a preponderance of the evidence. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In light of the therapeutic benefits of previous conditional release visits to the parents of a mental patient who had been acquitted, by reason of insanity, on charges relating to his attempt to assassinate the President, more

such visits would be appropriate despite determination that a grant of conditional release proposals presented, under District of Columbia law, by the patient and by the hospital, was not warranted. *United States v. Hinckley*, 346 F.Supp.2d 155, 2004 U.S. Dist. LEXIS 23724 (2004).

Under District of Columbia law, the existence of a substantial problem of danger in the reasonable future provides an adequate basis for the continued detention and confinement of an insanity acquittee who has committed a violent act, but if the evidence shows by a preponderance of the evidence that the patient will not be a danger under the proposed or other reasonable conditions of release, then the court must grant the petition for conditional release. *United States v. Hinckley*, 346 F.Supp.2d 155, 2004 U.S. Dist. LEXIS 23724 (2004).

Under District of Columbia law, it is for the court to determine whether a person in the custody of a mental hospital after being acquitted of a criminal offense by reason of insanity has recovered sufficiently to warrant a grant of conditional release, and if so, under what conditions. *United States v. Hinckley*, 346 F.Supp.2d 155, 2004 U.S. Dist. LEXIS 23724 (2004).

Under District of Columbia law, insanity acquittee was entitled to highly structured, limited conditional release from mental hospital under supervision of his parents, commencing with six local, unsupervised 12-hour day visits and, if successful, eventually including overnight visits with his parents in hotel within immediate vicinity of hospital, but not unsupervised 36-hour stays at his parents' house more than 50 miles from hospital, even though acquittee had shown no signs delusional or psychotic behavior in at least 10 years, where there was some evidence of continuing deceptive behavior, there was no reasonable expectation that acquittee would relapse within 48-hour period, and all mental health experts agreed that there was low risk of danger to acquittee and others. *United States v. Hinckley*, 292 F.Supp.2d 125, 2003 U.S. Dist. LEXIS 22561 (2003).

Under District of Columbia law, insanity acquittee was not entitled to unsupervised conditional release in custody of his parents for 36-hour periods away from mental hospital, even though acquittee had shown no signs delusional or psychotic behavior in at least 10 years, where hospital and majority of expert witnesses agreed that proposed release was clinically inappropriate due to evidence of acquittee's continued deceptive and narcissistic behavior, and acquittee had not yet successfully completed any lesser limited conditional releases. *United States v. Hinckley*, 292 F.Supp.2d 125, 2003 U.S. Dist. LEXIS 22561 (2003).

Under District of Columbia law, in considering petition for conditional release of insanity acquittee from mental hospital, court must independently weigh evidence and decide for itself ultimate question whether, if released under appropriate conditions, patient will not in reasonable future be dangerous to himself or others. *United States v. Hinckley*, 292 F.Supp.2d 125, 2003 U.S. Dist. LEXIS 22561 (2003).

Under District of Columbia law, in receiving and considering evidence in connection with petition for conditional release of insanity acquittee from mental hospital, court is not required to accept opinion of any expert witness, or even unanimous opinion of all experts, but must consider all relevant evidence including patient's hospital file, court files and records in case, and whatever illumination is provided by counsel. *United States v. Hinckley*, 292 F.Supp.2d 125, 2003 U.S. Dist. LEXIS 22561 (2003).

Under District of Columbia law, in considering petition for conditional release of insanity acquittee from mental hospital, if evidence shows by preponderance of evidence that patient will not be danger under proposed or other reasonable conditions of release, then court must grant petition for conditional release. *United States v. Hinckley*, 292 F.Supp.2d 125, 2003 U.S. Dist. LEXIS 22561 (2003).

Under District of Columbia law, in considering either hospital-initiated or patient-initiated request for conditional release of insanity acquittee from mental hospital, district court is obligated to make its own independent judicial determination regarding patient's dangerousness. *United States v. Hinckley*, 292 F.Supp.2d 125, 2003 U.S. Dist. LEXIS 22561 (2003).

Mental hospital was required to show, by preponderance of evidence, that patient acquitted on attempted murder charge by reason of insanity would not be dangerous to himself or others in reasonable future, before patient could be allowed to visit parents and friend for up to six hours, off campus and escorted by hospital personnel. D.C. Code 1981, § 24-301(e). *United States v. Hinckley*, 984 F. Supp. 35, 1997 U.S. Dist. LEXIS 20124 (1997), vacated by 163 F.3d 647, 333 U.S. App. D.C. 356, 1999 U.S. App. LEXIS 461 (1999).

In motion for conditional release made pursuant to District of Columbia Code provision governing commitment of those acquitted of crime by reason of insanity, court is required to make findings of fact and conclusions of law with regard to whether proposed release will benefit patient and be safe for public. D.C. Code 1981, § 24-301(k). *United States v. Hinckley*, 967 F. Supp. 557, 1997 U.S. Dist. LEXIS 8899 (1997), affirmed by 140 F.3d 277, 329 U.S. App. D.C. 315, 1998 U.S. App. LEXIS 7390, 48 Fed. R. Evid. Serv. (CBC) 1243 (1998).

For petitioner to be successful on motion for conditional release under District of Columbia Code provision governing commitment of those acquitted of crime by reason of insanity, court must, after weighing all evidence, find by preponderance of evidence that petitioner will not, in reasonable future, endanger himself or others; court must make affirmative finding that it is at least more probable than not that petitioner will not be violently dangerous in future. D.C. Code 1981, § 24-301(k). *United States v. Hinckley*, 967 F. Supp. 557, 1997 U.S. Dist. LEXIS 8899 (1997), affirmed by 140 F.3d 277, 329 U.S. App. D.C. 315, 1998 U.S. App. LEXIS 7390, 48 Fed. R. Evid. Serv. (CBC) 1243 (1998).

Hospital patient, committed following acquittal by reason of insanity for attempted assassination of United States President, was not entitled to vacation of stipulated order requiring hospital to give notice to court and United States Attorney's Office prior to any supervised excursions off hospital grounds, despite patient's claim that hospital did not plan such excursions that far in advance, and that notice requirement would trigger public hearing allowing public and media to know proposed location of excursion. D.C. Code 1981, § 24-301(k). *United States v. Hinckley*, 967 F. Supp. 557, 1997 U.S. Dist. LEXIS 8899 (1997), affirmed by 140 F.3d 277, 329 U.S. App. D.C. 315, 1998 U.S. App. LEXIS 7390, 48 Fed. R. Evid. Serv. (CBC) 1243 (1998).

Motion to vacate stipulated order, requiring hospital to give notice to court and to United States Attorney's Office prior to any supervised out-of-hospital excursions by patient who was committed following acquittal by reason of insanity for attempted assassination of United States President, was moot, in light of fact that hospital had not extended yet extended such off-ground excursion privileges to patient, so that notice requirement was not in issue. D.C. Code 1981, § 24-301(k). *United States v. Hinckley*, 967 F. Supp. 557, 1997 U.S. Dist. LEXIS 8899 (1997), affirmed by 140 F.3d 277, 329 U.S. App. D.C. 315, 1998 U.S. App. LEXIS 7390, 48 Fed. R. Evid. Serv. (CBC) 1243 (1998).

Insanity acquittee could not be conditionally released from hospital before being granted parole from concurrent criminal conviction. D.C. Code 1981, §§ 24-204(a), 24-301, 24-425. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

After insanity acquittee was granted conditional release, hospital's decision to return him to hospital temporarily for treatment pursuant to its authority under court order was not equivalent to revocation of conditional release. D.C. Code 1981, § 24-301(e, k). *Brown v. United States*, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410,

1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Court that conditioned release of insanity acquittee upon acquittee's continued outpatient treatment was obligated upon learning of acquittee's incarceration after felony conviction to take steps to assure his return to jurisdiction and to hospital for evaluation of his treatment needs. D.C. Code 1981, § 24-301(i). *Brown v. United States*, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Mental health patient who had been acquitted of crime by reason of insanity was not entitled to conditional release from confinement in mental health institution; judge had found that there was no less restrictive treatment available for patient, outside of institution, which would represent proper treatment and offer necessary protection to public. D.C. Code 1981, § 24-301(e), (k)(3). *Jackson v. United States*, 641 A.2d 454, 1994 D.C. App. LEXIS 71 (1994).

Request of murder defendant, who had been found not guilty by reason of insanity, for conditional release to attend vocational class was properly denied as moot where two months had passed since start of six-month course and defendant had not yet complied with court's conditions. D.C. Code 1981, § 24-301(e). *Woodard v. United States*, 551 A.2d 826, 1988 D.C. App. LEXIS 222 (1988).

Mere commission of a prior antisocial act by a patient, previously acquitted of a criminal offense by reason of insanity, who is seeking conditional release, without more, is not sufficient to establish dangerousness by a preponderance of the evidence such as would preclude the granting of conditional release. D.C. Code 1981, § 24-301(e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

Where both doctors who testified stated that condition of defendant, who had been committed to hospital for mentally ill following his acquittal on ground that he was insane at time of commission of offenses, had deteriorated and that he constituted a danger to himself and others, trial judge correctly declined to grant defendant's request for change in conditions of his confinement. D.C. Code § 24-301(d)(2), (e). *United States v. Tyler*, 376 A.2d 798, 1977 D.C. App. LEXIS 339 (1977).

Where the acquittee was moving for conditional release pursuant to subsection (k), but failed to meet the conditions of his release, the court had a fully adequate basis for revoking the conditional release and was not required to make a finding of dangerousness. *United States v. Lightfoot*, 119 WLR 1845 (Super. Ct. 1991).

Where the court had earlier concluded that release could be granted only upon compliance with certain conditions, it follows that a violation of those very conditions provides a complete and sufficient basis for revocation. *United States v. Lightfoot*, 119 WLR 1845 (Super. Ct. 1991).

— In general.

Insanity acquittee was not entitled to release merely because he had been hospitalized for period longer than he could have been incarcerated had he been convicted. D.C. Code 1981, §§ 21-545(b), 24-301(d)(1, 2), (e, j). *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S. Dist. Col. 1983).

Although it might be said that determination of insanity at prior criminal trial was not established by the same standards as applied in subsequent civil commitment proceedings petitioner was not entitled to unconditional release where civil commitment proceedings complied with all statutory safeguards to which petitioner was then entitled and petitioner had due notice of the proceedings and at all times during the proceedings was represented by guardian ad litem and there was ample evidence to support order denying requested release on ground that petitioner was still mentally ill and posed a serious danger to himself and others. D.C. Code 1981, §§ 21-315, 21-316, 24-301(d, e, k). *United States v. Snyder*, 689 F.2d 1067, 1982 U.S. App. LEXIS 16473 (C.A.D.C. 1982).

Mental hospital's recommendation for unconditional release of patient did not comply with District of Columbia statute setting forth requirements for unconditional release, since statement that, two years prior to the date of recommendation, patient had been diagnosed as "No Mental Disorder" and had been found not to be dangerous to himself or others did not satisfy statute's requirement calling for a clear, plain certification by superintendent of hospital with respect to patient's present dangerousness, and statement that the patient would not be a danger to himself or others "by reason of mental disorder" did not satisfy statute's requirement of an unqualified statement of opinion that the patient would not be dangerous to himself or others. D.C. Code 1981, § 24-301(e). *United States v. Snyder*, 689 F.2d 1067, 1982 U.S. App. LEXIS 16473 (C.A.D.C. 1982).

Fact that defendant might never improve sufficiently to obtain unconditional release from indeterminate commitment to hospital for mentally ill was not sufficient to require that he be released. D.C. Code § 24-301(d, e). *United States v. Jackson*, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

Legislative distinction between conditional and unconditional release of person who has been acquitted of a crime solely because of

mental illness and who has been committed to a hospital for the mentally ill is that only unconditional releases require a showing that patient has recovered his sanity. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Evidence that patient of mental hospital who had been acquitted on charges of murder and rape because of mental illness was still suffering from chronic mental illness, that his fantasy life which was observed on initial commitment had continued, and that the patient had been reprimanded for improperly touching a female patient on the buttocks and for seeking out female patients in the deaf program was sufficient to sustain finding that patient was likely to pose a danger to himself or others if the conditional release sought for him were granted. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Right of mental hospital patient, who had been acquitted of criminal charges because of his insanity, to receive treatment under least restrictive conditions possible did not entitle him to obtain conditional release upon recommendation of the hospital without judicial review. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

When a patient who has committed violent criminal acts is released from mental hospital, either conditionally or unconditionally, safety interests of the community must be considered. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

A claim of negligence by a public mental hospital in discharging a patient must be considered in light of the elusive qualities of mental disorders and the difficulty of analyzing and evaluating them. D.C. Code §§ 24-301, 24-301(b). *Hicks v. United States*, 511 F.2d 407, 1975 U.S. App. LEXIS 15207 (C.A.D.C. 1975).

Negligence of public mental hospital, an agent of the United States to which patient had been committed to determine his competency to stand trial on charge of assaulting his wife, was a substantial factor which contributed to the patient's release back into the community, as part of the continuing course of events which linked the negligence to the death of the patient's wife as a proximate cause of it. 18 U.S.C. §§ 1346(b), 2671; D.C. Code §§ 12-101, 24-301, 24-301(b). *Hicks v. United States*, 511 F.2d 407, 1975 U.S. App. LEXIS 15207 (C.A.D.C. 1975).

Claims of habeas corpus petitioner that he was being given inadequate medical treatment at hospital to which he had been committed as a sexual psychopath and that he was being confined in an improper place were rendered moot by his discharge. D.C. Code §§ 22-

3501(a), 22-3503 to 22-3511, 24-301(a). *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Where petitioner was in custody in hospital pursuant to commitment as sexual psychopath when he filed his habeas corpus petition, federal habeas corpus court did not lose jurisdiction to decide legality of commitments when the hospital thereafter unconditionally released petitioner. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a); Code Va.1950, § 54-446.4. *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Inasmuch as habeas corpus petitioner committed to hospital in 1958 as a sexual psychopath had been discharged, mental condition of petitioner at time of his 1967 bid for release was no longer an issue in the case. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a). *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. D.C. Code §§ 21-546 to 21-548, 24-301(e). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. D.C. Code §§ 21-546 to 21-548, 24-301(d, e, g). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. D.C. Code §§ 21-546 to 21-548, 24-301(e). *Bolton v. Harris*, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Mere fact that person committed under statute to mental institution following acquittal of criminal charge by reason of insanity has some dangerous propensity does not, standing alone, warrant his continued confinement but dangerous propensities must be related to or arise out of abnormal mental condition, whether such condition was that which constituted basis for acquittal. D.C. Code 1951, § 24-301; 18 U.S.C. §§ 4241 et seq., 4244-4248. *Overholser v.*

O'Beirne, 302 F.2d 852, 1961 U.S. App. LEXIS 3436 (C.A.D.C. 1961).

That one confined to mental institution because of his acquittal of criminal charges for insanity would no longer be committable under civil procedure could constitute no ground for his release where there was no showing that he had recovered to point where he was free from abnormal mental condition or that his release would not expose himself or public to danger in reasonably foreseeable future. D.C. Code 1951, §§ 21-301 et seq., 24-301. Overholser v. O'Beirne, 302 F.2d 852, 1961 U.S. App. LEXIS 3436 (C.A.D.C. 1961).

Under statute providing that a person committed to hospital for mentally ill because he was acquitted for criminal offense solely on ground that he was insane at time of commission may be unconditionally released by District Court if superintendent of hospital certifies, inter alia, that in his opinion such person will not in reasonable future be dangerous to himself or others, the danger to the public need not be possible physical violence or crime of violence but it is enough to preclude release if there is competent evidence that he may commit any criminal act. D.C. Code 1951, § 24-301(e). Overholser v. Russell, 283 F.2d 195, 1960 U.S. App. LEXIS 4177 (C.A.D.C. 1960).

The statute governing release of one committed to mental institution after being found not guilty of crime by reason of insanity, based upon certificate that such person has recovered sanity and will not in a reasonable future be dangerous to himself or others, does not, by phrase "establishing his eligibility for release", establish the test of whether particular individual, engaged in ordinary pursuits of life, is committable to mental institution under the law governing civil commitments, but requires freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future. D.C. Code 1951, § 24-301(d, e, g). Overholser v. Leach, 257 F.2d 667, 1958 U.S. App. LEXIS 4536 (C.A.D.C. 1958).

If trial judge submits to jury question of probable release of defendant at some future date from mental hospital, submits evidence to jury on that point, or comments to jury respecting speculative possibilities in that regard, trial judge commits error. D.C. Code 1951, § 24-301. Lyles v. U.S., 254 F.2d 725, 1957 U.S. App. LEXIS 4270 (C.A.D.C. 1957).

Where accused charged with incest was found by jury to be of unsound mind and was committed to hospital, upon discharge of accused from hospital as cured and in absence of anything showing invalidity of certificate of hospital superintendent, court was required to proceed with trial on the suspended criminal indictment and no further proceedings on the question of sanity were necessary. D.C. Code

1929, Tit. 16, § 20; D.C. Code 1940, §§ 24-301, 24-303. Haislip v. U.S., 129 F.2d 53, 1942 U.S. App. LEXIS 3286 (1942).

Under District of Columbia law, if court denies release of insanity acquittee in face of uncontradicted expert testimony, denial must be based on evidence in case and not merely on arbitrary substitution by court of its own opinion. United States v. Hinckley, 292 F.Supp.2d 125, 2003 U.S. Dist. LEXIS 22561 (2003).

Defendant was automatically committed to mental hospital without personally having asserted insanity defense as required by District of Columbia law, and thus, was entitled to be released; throughout defendant's hospital records were statements that he did not believe himself to be mentally ill, which was confirmed by his affidavit in which he stated he did not believe at time of incident or at time of affidavit that he was suffering from mental illness, and defendant sought to interrupt only witness called on his behalf and later stated to court that doctor was making up parts of his testimony and that defendant appreciated wrongfulness of his act. D.C. Code 1981, § 24-301(d). United States v. Potter, 664 F. Supp. 551, 1986 U.S. Dist. LEXIS 27012 (1986).

Where, on August 11, general hospital to which patient had been committed to determine his competency to stand trial on charge of assaulting his wife reported that patient was suffering from chronic brain syndrome due to actual brain damage, patient was committed to mental hospital and superintendent of mental hospital, on December 19, informed trial court that patient had recovered from mental disorder and was mentally competent to stand trial though mental hospital personnel knew that patient had suffered from organic brain defect and nothing in their evaluation differed from findings reported by general hospital, mental hospital was negligent in failing to transmit adequate information to trial court and United States, of which hospital was an agent, was liable for death of patient's wife who was fatally shot by patient less than two months after his discharge from hospital. 18 U.S.C. §§ 1346(b), 2671 et seq.; D.C. Code §§ 12-101, 24-301. Hicks v. United States, 357 F. Supp. 434, 1973 U.S. Dist. LEXIS 13958 (1973), affirmed by 511 F.2d 407, 167 U.S. App. D.C. 169, 1975 U.S. App. LEXIS 15207 (1975).

To be "arbitrary" or "capricious", refusal of superintendent of hospital to certify that person committed to hospital after being found not guilty of criminal charge on ground of insanity has recovered his sanity and is entitled to unconditional release must be without a reasonable or rational basis, but it need not be made in bad faith. D.C. Code 1961, § 24-301(c, g). Robertson v. Cameron, 224 F. Supp. 60, 1963 U.S. Dist. LEXIS 6409 (D.D.C.1963).

Superintendent of hospital to which person is committed after having been found not guilty of a crime on ground of insanity may not act according to his personal notion or whim, no matter how well intentioned or bona fide his action may be, in determining whether person committed has recovered his sanity and is entitled to an unconditional release. D.C. Code 1961, § 24-301(c, g). *Robertson v. Cameron*, 224 F. Supp. 60, 1963 U.S. Dist. LEXIS 6409 (D.D.C.1963).

Refusal of superintendent of hospital to which person had been committed after being found not guilty of crime on ground of insanity to make certificate as basis for committed person's release was arbitrary and capricious, in view of showing of grounds for release. D.C. Code 1961, § 24-301(c, g). *Robertson v. Cameron*, 224 F. Supp. 60, 1963 U.S. Dist. LEXIS 6409 (D.D.C.1963).

One who had been found not guilty by reason of insanity and committed to mental hospital could not be detained in hospital beyond period of maximum sentence possible for the offense charged, because of "sociopathic personality" which was not sufficient basis for a civil adjudication of mental incompetency, even if such condition tended to make him an habitual petty criminal. D.C. Code 1951, § 24-301(c-e). *O'Beirne v. Overholser*, 193 F.Supp. 652, 1961 U.S. Dist. LEXIS 3352 (D.D.C.1961).

Evidence supported court's determination to deny request of patient, acquitted by reason of insanity, from being given unconditional release; there was medical evidence defendant had alcohol dependence, a dysthymic disorder, and a personality disorder, and he presented threat to himself and other persons if released, as evidenced by fact that he had been involved in automobile accident while drinking. D.C. Code 1981, § 24-301(k)(3). *Jackson v. United States*, 641 A.2d 454, 1994 D.C. App. LEXIS 71 (1994).

Mental health conditions which are insufficient to support original involuntary commitment of patient deemed not guilty by reason of insanity, may be sufficient to defeat petition of patient for unconditional or conditional discharge from institution. D.C. Code 1981, § 24-301. *Jackson v. United States*, 641 A.2d 454, 1994 D.C. App. LEXIS 71 (1994).

Court at stipulated trial during which movant pleaded not guilty by reason of insanity was required to inform movant that he would be eligible for release only if court, after receiving views of hospital authorities, found that he was no longer danger to himself or others and that, if court continued to consider him as danger to himself or others, then he would remain indefinitely confined; advising movant that it would be up to doctors to decide when he should be released and that release could come in short time or long time was inadequate.

Criminal Rules 11, 32(e); D.C. Code 1981, § 24-301(e, g). *Legrand v. United States*, 570 A.2d 786, 1990 D.C. App. LEXIS 29 (1990).

Trial court did not have discretion to release appellee, who was found not guilty by reason of insanity, before order for commitment to "a hospital for the mentally ill" was put into effect. D.C. Code 1981, § 24-301(d). *United States v. Mendelsohn*, 443 A.2d 1311, 1982 D.C. App. LEXIS 319 (1982).

Mental hospital patient, who was committed following acquittal by reason of insanity of attempted petit larceny charges, was not entitled to be released from commitment upon expiration of hypothetical maximum period of detention to which he might have been sentenced had he been convicted of crime since commitment to mental hospitals of persons acquitted of criminal charges by reason of insanity was not based on punitive considerations but was based upon need for treatment. D.C. Code 1973, § 24-301(d). *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Where maximum possible prison term for which defendant found not guilty of petit larceny by reason of insanity could have been incarcerated had expired, he was entitled to release from criminal commitment, subject to Government's right to seek civil commitment. D.C. Code §§ 21-101 et seq., 24-301(d). *Jones v. United States*, 411 A.2d 624, 1980 D.C. App. LEXIS 227 (1980).

There was no constitutional requirement that defendant, who had been found not guilty of petit larceny by reason of insanity and who, after a "release hearing," had been indefinitely committed to a mental hospital, be released or civilly committed at end of maximum imprisonment period, for that period bore no relationship to unchallenged basis for defendant's hospital confinement, that he was mentally ill, was dangerous to self or others, and should receive treatment until he was well enough for release. D.C. Code §§ 21-545(b), 24-301(d). *Jones v. United States*, 396 A.2d 183, 1978 D.C. App. LEXIS 585 (1978).

Determination of competency to stand trial for subsequent offense, allegedly committed after confined party's escape from mental hospital, did not render moot issue that he was eligible for release from hospital, where he had been confined upon pleading not guilty by reason of insanity to taking indecent liberties with minor, on ground that he was no longer mentally ill and did not pose injury to himself or community, and, due to length of time which passed since last hearing almost two years earlier, confined party had, except for pendency of this appeal, right to institute new proceedings seeking reexamination to determine

whether he was eligible to be released from commitment order. D.C. Code §§ 22-3501, 24-301(a, k). *Harris v. United States*, 356 A.2d 630, 1976 D.C. App. LEXIS 527 (1976).

One who seeks release without statutory certification by superintendent of hospital, from commitment to hospital after being found not guilty of crime by reason of insanity must show that he has recovered his sanity and that such recovery has reached point where he has no abnormal mental condition which in reasonably foreseeable future would give rise to danger to patient or to public in event of his release. D.C. Code § 24-301(b, d, e). *United States v. Charnizon*, 232 A.2d 586, 1967 D.C. App. LEXIS 186 (App. 1967).

Notice given by the hospital within 5 days to an insanity acquittee, all counsel, and the court that a restriction on release has been imposed, and the reasons therefor, is fully adequate to give the acquittee the opportunity to avail himself of a court hearing, which can be as expansive as necessary to fully litigate the appropriateness of the restriction. *United States v. Cotman*, 119 WLR 1173 (Super. Ct. 1991).

— Review, release from hospital.

District judge's alleged reliance on information regarding insanity acquittee's condition that was more than ten years old did not require judge's removal from case and transfer of case to another judge, in proceeding to determine whether acquittee was eligible for supervised outing from hospital where he was committed; district court exercising proper jurisdiction over request for release may take into account a patient's past record, and, in any event, nothing in record on appeal demonstrated that judge was unable to rule fairly or had otherwise compromised the appearance of justice. 18 U.S.C. § 144; D.C. Code 1981, § 24-301(e). *Hinckley v. United States*, 163 F.3d 647, 1999 U.S. App. LEXIS 461 (C.A.D.C. 1999).

District court did not rely on deliberations of hospital review board upon insanity acquittee's motion for conditional release from hospital, where court referred to board's decision only in connection with standard of review issue and had no knowledge as to content of deliberations. *Hinckley v. United States*, 140 F.3d 277, 1998 U.S. App. LEXIS 7390 (C.A.D.C. 1998).

Even if district court relied on hospital review board's denial of insanity acquittee's request for conditional release from hospital, when court was conducting its review of evidence upon motion for release, court properly shielded board's internal deliberations under deliberative process privilege because deliberations were predecisional and deliberative. *Hinckley v. United States*, 140 F.3d 277, 1998 U.S. App. LEXIS 7390 (C.A.D.C. 1998).

When a district court is asked to review the medical judgment of a hospital staff on a ques-

tion of internal administration, its function resembles that of an appellate court when it reviews agency action and, in deference to medical expertise, the hospital should be allowed to operate within a broad range of discretion; when district court is asked to review conditional release certification of person who has been acquitted on grounds of mental illness and confined to hospital for the mentally ill, court must decide whether the proposed release affords reasonable assurances for the public safety. D.C. Code § 24-301(d)(1), (e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Narrow standard of review of decision of hospital for the mentally ill applies only when public safety is not a factor; it has no applicability in proceedings for conditional or unconditional release of person who has been acquitted of criminal charges on grounds of mental illness and who has been confined to hospital for the mentally ill. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Whether inmate of hospital for the mentally ill who has been acquitted of criminal charges solely on grounds of mental illness is recommended for conditional or unconditional release, district court must weigh the evidence in the same manner that it does when deciding matters de novo. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Weight to be given any expert opinion admitted into evidence at hearing to determine whether approval should be given to proposed release of inmate of mental hospital who was assigned to the hospital following acquittal of criminal charges on grounds of mental illness is exclusively for the judge; judge is not bound to accept the opinion of any expert witness or group of expert witnesses; hospital certification that patient is ready for conditional release should be viewed as an amalgamation of expert opinion which the trial court must weigh along with other evidence. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Trial court's determination to either approve or disapprove hospital's recommendation that inmate who has been confined to hospital following acquittal on criminal charges on the grounds of mental illness be conditionally released may be based on other evidence in the record besides expert testimony, such as the patient's hospital file, the court files and records in the case, and illumination provided by counsel. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Role of the district court in conditional release proceedings is not simply to review the hospital's decision for unreasonableness but

rather to decide the ultimate question of whether the present status of the patient is such that continued confinement without conditional release is justifiable. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

In order for district court to approve conditional release of patient of mental hospital who has been acquitted of criminal charges because of his mental illness, court must independently weigh the evidence and make a *de novo* determination that the patient will not, in the reasonable future, endanger himself or others; it is not technically sufficient for the district court merely to find that the patient is no longer likely to injure himself or others because of his mental illness. D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Court of Appeals' review of district court's denial of request for conditional release of mental hospital inmate who has been acquitted of criminal charges because of his mental illness is limited to setting aside the decision only if the findings are clearly erroneous. Fed. Rules Civ. Proc. rule 52(a), 18 U.S.C.; D.C. Code § 24-301(e). *United States v. Ecker*, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

In proceeding before judge without jury on recommendation of superintendent of hospital for mentally ill, to which defendant had been committed after being found not guilty by reason of insanity, that defendant be unconditionally released, detective's testimony which was allegedly hearsay and which concerned evidence of defendant's alleged involvement in murder following escape from hospital merely flushed out evidence otherwise before court in hospital records and testimony of hospital personnel and thus judge, who would have been remiss in fulfilling his responsibility to guard against discharge of mentally ill patient who might be dangerous to others had he closed his eyes to detective's report of investigation, did not err in admitting such testimony. D.C. Code § 24-301(e). *United States v. Snyder*, 529 F.2d 871, 1976 U.S. App. LEXIS 13495 (C.A.D.C. 1976).

Evidence, including hospital records', reflection of ambivalence and uncertainty concerning defendant's condition, in proceeding on recommendation of superintendent of hospital for mentally ill, to which defendant had been committed after being found not guilty by reason of insanity, that defendant had recovered his sanity and in opinion of superintendent would not in reasonable future be dangerous to himself or others and was therefore entitled to unconditional release, supported finding that defendant still suffered from mental illness and would be dangerous to others if released. D.C. Code § 24-301(e). *United States v. Snyder*, 529

F.2d 871, 1976 U.S. App. LEXIS 13495 (C.A.D.C. 1976).

Judicial decision rendered in 1968 interpreting words "not insane" as used in Sexual Psychopath Act as meaning "not mentally ill" should have been used by court in ruling on petitioner's 1967 bid for release from hospital to which he had been committed as a sexual psychopath. D.C. Code §§ 22-3501(a), 22-3503 to 22-3511, 24-301(a). *Justin v. Jacobs*, 449 F.2d 1017, 1971 U.S. App. LEXIS 10145 (C.A.D.C. 1971).

When mental patient is seeking complete release from confinement, scope of judicial review of hospital administrator's decision is broader and the function of the hearing court is not simply to review the hospital's decision for unreasonableness, but rather itself to decide ultimate question of whether present status of patient is such that continued confinement is justifiable. D.C. Code §§ 21-546 to 21-549, 24-301(g). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

That patient has fears that his release from mental institution will endanger himself or community to which he is being released may be considered on issue of release and determination is reviewable on appeal. D.C. Code 1961, § 24-301(d, e). *Green v. United States*, 349 F.2d 203, 1965 U.S. App. LEXIS 5027 (C.A.D.C. 1965).

Mental patient had standing to appeal District Court's order releasing him to prison from institution to which he had been committed after being found not guilty of robbery by reason of insanity. D.C. Code 1961, § 24-301(d, e). *Green v. United States*, 349 F.2d 203, 1965 U.S. App. LEXIS 5027 (C.A.D.C. 1965).

Where trial court did not have benefit of construction of Court of Appeals respecting statute providing for the conditional release of patients who have been committed to mental hospital after acquittal of crime by reason of insanity, Court of Appeals would refrain from review of evidence and allow trial court to evaluate it in the first instance in light of principles held applicable. D.C. Code 1951, § 24-301(d, e). *Hough v. U.S.*, 271 F.2d 458, 1959 U.S. App. LEXIS 3367 (C.A.D.C. 1959).

In considering either a hospital-initiated or a patient-initiated request for conditional release of a patient committed to a hospital following a verdict in a criminal trial of not guilty by reason of insanity, the court is obligated to make its own independent judicial determination regarding the patient's dangerousness. *United States v. Hinckley*, 407 F.Supp.2d 248, 2005 U.S. Dist. LEXIS 36949 (2005).

In receiving and weighing evidence on motion for conditional release under District of Columbia Code provision governing commitment of those acquitted of crime by reason of insanity, court is not bound to accept opinion of

any expert witness but is free to consider other evidence, including patient's hospital file, court files and records in case, and whatever illumination is provided by counsel. D.C. Code 1981, § 24-301(k). *United States v. Hinckley*, 967 F. Supp. 557, 1997 U.S. Dist. LEXIS 8899 (1997), affirmed by 140 F.3d 277, 329 U.S. App. D.C. 315, 1998 U.S. App. LEXIS 7390, 48 Fed. R. Evid. Serv. (CBC) 1243 (1998).

Testimony of government's expert psychiatrist warranted finding that hospital patient, committed following acquittal by reason of insanity for attempted assassination of United States President, would present danger to himself or others if granted conditional release, despite patient's experts' contrary testimony as to his progress in treatment; government's expert emphasized patient's continuing history of deception and propensity to withhold information from those treating him, and disturbing parallels in petitioner's current conduct to conduct leading up to shooting of President, including stalking of actress and another president. D.C. Code 1981, § 24-301(k). *United States v. Hinckley*, 967 F. Supp. 557, 1997 U.S. Dist. LEXIS 8899 (1997), affirmed by 140 F.3d 277, 329 U.S. App. D.C. 315, 1998 U.S. App. LEXIS 7390, 48 Fed. R. Evid. Serv. (CBC) 1243 (1998).

Under statute requiring appropriate certificate of superintendent of mental hospital as a condition precedent to release of person committed, court may not substitute its own judgment for that of superintendent and may not try the matter de novo in habeas corpus proceeding, but superintendent's action or failure to act may not be deemed final or conclusive for all purposes. D.C. Code 1951, § 24-301(c-e). *O'Beirne v. Overholser*, 193 F.Supp. 652, 1961 U.S. Dist. LEXIS 3352 (D.D.C.1961).

Trial court's failure to make explicit finding that in-patient treatment for insanity acquittee was least restrictive treatment was not error on acquittee's motion for release where no such finding was requested and it was evident that trial court considered continued confinement in mental hospital was a necessity. D.C. Code 1981, § 24-301(k). *Hearne v. United States*, 631 A.2d 52, 1993 D.C. App. LEXIS 236 (1993).

Ordering Bolton postverdict hearing to determine eligibility for release from confinement due to recovery from mental illness was not error, even though defendant sought to waive his right to such hearing during the insanity phase of his trial for first-degree murder, armed robbery and sodomy. D.C. Code 1981, § 24-301(d), (d)(2). *Adams v. United States*, 502 A.2d 1011, 1986 D.C. App. LEXIS 261 (1986).

A trial court's judgment concerning the conditional release of a patient previously acquitted of a criminal offense by reason of insanity must survive scrutiny by the Court of Appeals unless it is plainly wrong or without evidence to support it. D.C. Code 1981, §§ 17-305(a), 24-

301(e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

A trial court ruling on a request for conditional release of a patient previously acquitted of a criminal offense by reason of insanity, after considering, *inter alia*, the pertinent psychiatric testimony offered at the hearing, must make its own de novo determination of whether the acquittee will present a danger to herself or others under the proposed conditions of release; the hospital's certification, which may include a claim that the acquittee will not be dangerous in the reasonable future, does not establish a presumption in favor of release, since the court must determine in the final analysis whether release is in the public's as well as the acquittee's interest. D.C. Code 1981, § 24-301(e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

Although a hearing to determine whether a patient previously acquitted of a criminal offense by reason of insanity is entitled to conditional release is solely concerned with appropriateness of the release under proposed conditions, and although such a hearing is informal and nonadversarial with no party bearing a formal burden of proof, trial court, after hearing the evidence on hospital's certification, must be convinced by a preponderance of the evidence that conditional release is warranted. D.C. Code 1981, § 24-301(d), (d)(2)(B), (e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

In determining whether a patient previously acquitted of a criminal offense by reason of insanity is entitled to conditional release, court should consider hospital records, files, and psychiatric history of the acquittee, previous diagnosis and prognosis, success or failure of any previous attempts at release, similarity to past attempts at release, the acquittee's demonstrated behavior, including the act for which she was prosecuted as well as other prior crimes or bad acts if the behavior relates to current determination of dangerousness, period of time elapsed since the acquittee was adjudged unsuitable for conditional or unconditional release, proposed conditions themselves and if they will protect public safety, and testimony adduced at the hearing. D.C. Code 1981, § 24-301(e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

If the court, in reviewing a request for conditional release of a patient previously acquitted of a criminal offense by reason of insanity, finds that the proposed conditions of release do not adequately provide for the public safety, reasons derived from the record must be given for the judgment. D.C. Code 1981, § 24-301(e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

A trial court, in reviewing a request for conditional release of a patient previously ac-

quitted of a criminal offense by reason of insanity, may, in its discretion, delete objectionable portions of the release plan or add others, but it need not do so; trial court's findings must state why the conditions have been rejected so that, if feasible, a renewed plan for release may be developed. D.C. Code 1981, § 24-301(e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

Trial court, which had denied request for conditional release of a patient previously acquitted of the murder of her daughter by reason of insanity, was required to review its decision and supplement the record if appropriate, where all witnesses at the hearing favored the conditional release, but Court of Appeals was not convinced that the trial court adequately addressed all of the relevant evidence before it, and could not determine whether the court's determination of continuing dangerousness was contrary to the evidence or adequately reflected it. D.C. Code 1981, § 24-301(e). *De Veau v. United States*, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

Because person committed to mental hospital following acquittal of criminal charges by reason of insanity has right to jury determination of past insanity at criminal trial, because it is reasonable to presume continuation of mental illness in such person, and because jury right in commitment proceedings is not as meaningful as in ordinary criminal cases, absence of jury right at release hearing is not substantial difference for equal protection purposes vis-a-vis involuntary civil commitment proceedings. D.C. Code 1973, §§ 21-545(b), 24-301(d); U.S. Const. Amend. 5. *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Difference between requiring persons committed to mental hospitals following acquittal of criminal charges by reason of insanity to rebut presumption of continuing insanity and requiring District of Columbia to prove mental illness and dangerousness of persons subject to involuntary civil commitment by clear and convincing evidence is justified by fact that defendant raising insanity defense should not have to meet higher burden on such a relatively difficult issue; however, when District seeks to commit person who is disputing fact of insanity or dangerousness, it is reasonable that risk of error be more heavily thrust upon Government. D.C. Code 1973, §§ 21-545(b), 24-301(d); U.S. Const. Amend. 5. *Jones v. United States*, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Purpose of hearing under statute providing that person acquitted solely on grounds of in-

sanity shall have hearing unless waived within 50 days of confinement to determine whether he is entitled to release from custody is to determine whether one who successfully prevailed on insanity defense is entitled to early release because of improvement in his condition and if judge finds that one has shown by preponderance of evidence that he meets standards for conditional or unconditional release, judge may enter such order as appears appropriate. D.C. Code § 24-301(d)(2), (e). *United States v. Tyler*, 376 A.2d 798, 1977 D.C. App. LEXIS 339 (1977).

At hearing instituted by confined party, having been found not guilty by reason of insanity of taking indecent liberties with minor, to determine need for his further confinement at psychiatric hospital, superior court's findings of fact were insufficient to permit affirmance of order finding him ineligible for release. D.C. Code §§ 22-3501, 24-301(k), (k)(3). *Harris v. United States*, 356 A.2d 630, 1976 D.C. App. LEXIS 527 (1976).

At hearing instituted by confined party, having been found not guilty by reason of insanity of taking indecent liberties with minor, to determine need of his further confinement at psychiatric hospital, burden of proof at hearing was on confined party to establish that he was both sane and not dangerous to himself or others, but he failed to carry that burden. D.C. Code §§ 22-3501, 24-301(k), (k)(3). *Harris v. United States*, 356 A.2d 630, 1976 D.C. App. LEXIS 527 (1976).

Even without specific requirement in statute, court hearing a proceeding brought for release of confined party from psychiatric hospital upon certification of superintendent of hospital should make such findings as are necessary to allow meaningful review on appeal. D.C. Code § 24-301(e). *Harris v. United States*, 356 A.2d 630, 1976 D.C. App. LEXIS 527 (1976).

Review.

Insanity acquittee seeking conditional release from hospital sufficiently raised, before district court, claim that hospital review board's internal deliberations were not protected under deliberative process privilege, thereby avoiding application of only plain error standard of review. *Hinckley v. United States*, 140 F.3d 277, 1998 U.S. App. LEXIS 7390 (C.A.D.C. 1998).

Court's findings concerning mental illness and dangerous propensities are not to be disturbed unless they lack support in record or rest on an erroneous legal principle. D.C. Code 1961, § 24-301. *Rouse v. Cameron*, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Where a trial court, in a criminal prosecution, should have directed a judgment of acquittal by reason of insanity, notwithstanding the

verdict, judgment of conviction would be vacated on appeal and case remanded with directions. D.C. Code 1951, § 24-301(e). *Isaac v. U.S.*, 284 F.2d 168, 1960 U.S. App. LEXIS 5558 (C.A.D.C. 1960).

Where it appeared to Court of Appeals reviewing conviction of an attempted abortion resulting in death that evidence did not permit trier of fact to conclude beyond a reasonable doubt that defendant had no mental disease or defect case would be remanded with instructions that unless Government advised trial court without unreasonable delay that it can meet its burden of proof at a new trial, defendant is to be acquitted on ground of insanity and committed to a mental hospital and dealt with in accordance with statute, that is, hospitalized until she is free from such abnormal condition as would render her dangerous to herself or community in the reasonably foreseeable future. D.C. Code 1951, § 24-301. *Hopkins v. U.S.*, 275 F.2d 155, 1959 U.S. App. LEXIS 2907 (C.A.D.C. 1959).

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. D.C. Code 1951, §§ 14-308, 22-2901, 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

Appellate court reviews a trial court's decision to deny presentation of testimony in support of an insanity defense for abuse of discretion. *Bell v. United States*, 950 A.2d 56, 2008 D.C. App. LEXIS 264 (2008).

Trial judge's decision whether to conduct a *Freundak* inquiry into whether a defendant voluntarily and intelligently waived an insanity defense is reviewed for abuse of discretion. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

Trial court would have discretion, on remand for *Freundak* inquiry into whether defendant voluntarily and intelligently waived insanity defense, to order psychiatric evaluations to resolve defendant's capacity for waiving that defense. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

If, on remand for *Freundak* inquiry, trial court concluded that defendant made a voluntary and intelligent decision at the time of trial to waive an insanity defense, that would end the matter and conviction would stand. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

If, on remand for *Freundak* inquiry into whether defendant voluntarily and intelligently waived an insanity defense, trial court concluded that defendant did not make such a waiver, then the court would be required to determine whether defendant presently wished to waive the insanity defense, and if he did not, or was presently incapable of making a voluntary and intelligent decision, court should order a productivity examination to determine whether there was sufficient evidence for an insanity defense. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

If, on remand for *Freundak* inquiry into whether defendant voluntarily and intelligently waived an insanity defense, trial court ordered a productivity examination, defendant cooperated, and court concluded as a result that defendant's actions at time of crime may have been product of insanity, court would have discretion to order a new insanity phase of the trial. *Patton v. United States*, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

Court of Appeals' review of trial court's rulings with respect to defendant's competency to stand trial is limited to examination of whether trial court abused its discretion, exercise of which will not be lightly disturbed. D.C. Code § 24-301(a). *Clyburn v. United States*, 381 A.2d 260, 1977 D.C. App. LEXIS 310 (1977), writ of certiorari denied by 435 U.S. 999, 98 S. Ct. 1656, 56 L. Ed. 2d 90, 1978 U.S. LEXIS 1660 (1978).

On appeal from order finding confined party ineligible for release from psychiatric hospital, the Court of Appeals could not supply its own valuation of evidence without improperly miscasting it as finder of fact. D.C. Code § 24-301(k). *Harris v. United States*, 356 A.2d 630, 1976 D.C. App. LEXIS 527 (1976).

Sufficiency of evidence.

On record presented, in robbery prosecution, it was error to deny defendant's motion for directed verdict on ground of insanity. D.C. Code 1951, § 24-301. *Satterwhite v. U.S.*, 267 F.2d 675, 1959 U.S. App. LEXIS 3810 (C.A.D.C. 1959).

While issue of criminal responsibility of defendant suffering from mental disease is not an issue of fact in same sense as the commission of the offense, it still is an issue of fact. D.C. Code 1951, § 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

In murder prosecution, evidence presented fact question for jury as to defendant's mental competency when crime was committed. D.C. Code 1951, § 24-301. *U.S. v. Fielding*, 148 F.Supp. 46, 1957 U.S. Dist. LEXIS 3974 (D.D.C.1957).

Assuming that trial court can direct verdict for defendant on insanity question, evidence would have to be virtually conclusive, given

that defendant has burden of proving insanity by preponderance of the evidence. D.C. Code § 24-301(j). *Gilbert v. United States*, 395 A.2d 1, 1978 D.C. App. LEXIS 361 (1978).

Evidence that, *inter alia*, defendant suffered from severe personality disorder that caused him on occasion to disassociate when his sexual advances were rejected, and that while defendant was in this state, he did not have capacity for choice or control, was sufficient to allow jury to reasonably infer from all evidence that defendant had necessary mental capacity for first degree burglary when he entered victim's apartment armed with knife but that he did not have capacity for choice or control when he killed victim because of a then dissociative condition. D.C. Code §§ 22-501, 22-1801(a), 22-2403, 22-3202, 24-301(j). *Harman v. United States*, 351 A.2d 504, 1976 D.C. App. LEXIS 468 (1976), writ of certiorari denied by 429 U.S. 841, 97 S. Ct. 116, 50 L. Ed. 2d 110, 1976 U.S. LEXIS 2668 (1976).

In prosecution for intoxication, evidence was insufficient to support trial judge's finding that defendant was not guilty because of insanity. D.C. Code 1951, §§ 24-301(a, b), 25-128. *Williams v. District of Columbia*, 147 A.2d 773, 1959 D.C. App. LEXIS 222 (Cr.App. 1959).

Defendant failed to carry his burden of establishing by a preponderance of the evidence that he would not be dangerous to himself or others as a result of mental illness if released to work in hospital's motor pool; although risk assessments ranged from low to moderately high risk of recidivism and violence, defendant's current diagnosis of sexual sadism in full remission in a controlled setting supported conclusion that any release needed to be into a controlled situation, and defendant's proposed release would not be under constant supervision of staff with forensic training. *U.S. v. Graves*, 135 WLR 313 (Super. Ct. 2007).

Treatment.

Evidence that, *inter alia*, there had not only been a good faith effort to treat defendant, who was committed to hospital for mentally ill following acquittal by reason of insanity, but that treatment provided was suited to defendant's needs and that his condition had improved during his confinement sufficiently established that defendant was given adequate treatment, despite fact that defendant, who suffered from mental retardation, had been confined to a hospital for the mentally ill. D.C. Code § 24-301(d), (d)(2). *United States v. Jackson*, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

Mental hospital patient who had been acquitted on charges of rape and murder by reason of insanity had the right to treatment under the least restrictive conditions possible. D.C. Code § 24-301(d)(1). *United States v. Ecker*, 543 F.2d

178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

One who is committed to mental hospital upon hearing following acquittal by reason of insanity is entitled not only to treatment but to treatment in least restrictive alternative consistent with legitimate purposes of commitment. D.C. Code § 24-301(d)(2). *Ashe v. Robinson*, 450 F.2d 681, 1971 U.S. App. LEXIS 8091 (C.A.D.C. 1971).

If mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial review of his custody. D.C. Code §§ 21-546, 21-548, 21-549, 24-301(d). *Dixon v. Jacobs*, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Purpose of involuntary hospitalization is treatment, not punishment. D.C. Code 1961, § 24-301(d). *Rouse v. Cameron*, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

One involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. *Rouse v. Cameron*, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

On issue of right to treatment of one involuntarily committed on being acquitted of an offense by reason of insanity, hospital need not show that treatment will cure or improve him but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. *Rouse v. Cameron*, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

On issue of right to treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity, effort should be to provide treatment which is adequate in light of present knowledge. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. *Rouse v. Cameron*, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Continuing failure to provide suitable and adequate treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity cannot be justified by lack of staff or facilities. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. *Rouse v. Cameron*, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

If court finds that a mandatorily committed patient is in custody in violation of Constitution and laws, for failure to receive treatment, it may allow hospital a reasonable opportunity to initiate treatment, but if opportunity for treat-

ment has been exhausted or is otherwise inappropriate conditional or unconditional release may be in order. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301; 18 U.S.C. §§ 2241(c)(3), 2243. *Rouse v. Cameron*, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Mental hospital inmate who had been committed, under statute, on acquittal of charge of indecent exposure was entitled, in habeas corpus proceeding, to question constitutionality of mandatory commitment statute, as applied to inmate, on ground that he was not receiving treatments. D.C. Code 1961, § 24-301 and (e). *Darnell v. Cameron*, 348 F.2d 64, 1965 U.S. App. LEXIS 5418 (C.A.D.C. 1965).

Once a man has been committed to a hospital after verdict of not guilty by reason of insanity, government need not thereafter be forced to prove his insanity as price of continuing treatment. 18 U.S.C. § 4244; D.C. Code 1951, § 24-301(a, b). *Overholser v. Lynch*, 288 F.2d 388, 1961 U.S. App. LEXIS 5476 (C.A.D.C. 1961).

Due process did not compel delay in psychotropic drug treatment of person committed following determination of not guilty by reason of insanity pending completion of hearing on his suitability for release. D.C. Code 1981, § 24-301(k); U.S. Const. Amends. 5, 14. *United States v. Leatherman*, 580 F. Supp. 977, 1983 U.S. Dist. LEXIS 13015 (1983), appeal dismissed without opinion by 729 F.2d 863, 234 U.S. App. D.C. 377 (1984).

Public safety places a practical restriction upon the types of treatment available to the insanity acquittee. D.C. Code 1981, § 24-301. *Harman v. United States*, 718 A.2d 114, 1998 D.C. App. LEXIS 166 (1998).

Procedures used by hospital for involuntary administration of medication to render defendant competent to stand trial for murder satisfied due process requirements, despite lack of adversarial hearing. D.C. Code 1981, § 24-301(a); U.S. Const. Amend. 5. *Tran Van Khiem v. United States*, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

It was not necessary that decision to medicate defendant involuntarily, to make him competent to stand trial, be made exclusively in his medical interest for such decision to comport with requirements of due process; prosecution's law enforcement interests in case was significant one that it was proper to consider. D.C. Code 1981, § 24-301(a); U.S. Const. Amend. 5. *Tran Van Khiem v. United States*, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Validity.

District of Columbia statute which requires accused to prove insanity defense by preponderance of evidence does not deny equal protection merely because different standard of proof concerning such defense is applicable in other

federal jurisdictions. D.C. Code § 24-301(j); U.S. Const. art. 3, § 1 et seq. *United States v. Greene*, 489 F.2d 1145, 1973 U.S. App. LEXIS 7659 (C.A.D.C. 1973).

District of Columbia statute requiring mandatory confinement of persons found not guilty by reason of insanity is constitutional. D.C. Code 1951, § 24-301(d). *Foller v. Overholser*, 292 F.2d 732, 1961 U.S. App. LEXIS 4618 (C.A.D.C. 1961).

The District of Columbia statute providing for commitment of accused found incompetent to stand trial to a mental hospital is not unconstitutional for absence of provision for jury trial since all that is required is due process which is satisfied by judicial hearing which is provided for. D.C. Code 1951, § 24-301. *Williams v. Overholser*, 162 F.Supp. 514, 1958 U.S. Dist. LEXIS 4119 (D.D.C.1958).

Statute providing for commitment of defendant found incompetent to stand trial was not unconstitutional as applied to defendant who was mentally retarded and was "not ever going to be competent;" trial court determined that defendant's incompetence was more attributable to his anxiety than to any mental deficiency. D.C. Code 1981, §§ 17-305(a), 24-301(a). *Farrell v. United States*, 646 A.2d 963, 1994 D.C. App. LEXIS 133 (1994).

Statute which requires the defendant to establish his defense of insanity by a preponderance of the evidence does not violate equal protection in its application. D.C. Code § 24-301(j). *Bethea v. U.S.*, 365 A.2d 64, 1976 D.C. App. LEXIS 374 (1976).

Statutes governing competency in juvenile court and transfer proceedings are subject to due process standard requiring that the juvenile has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of proceedings against him. In re D.C., 129 WLR 1885 (Super. Ct. 2001).

Verdicts.

A general verdict of not guilty by reason of insanity carried with it a finding that, except for the question as to his sanity, defendant was guilty as charged. D.C. Code 1951, § 24-301(d). *Rucker v. U.S.*, 280 F.2d 623, 1960 U.S. App. LEXIS 4479 (C.A.D.C. 1960).

In appropriate case there is duty to set aside verdict of guilty and to direct verdict of not guilty by reason of insanity; though this duty is to be performed with caution because of deference due jury in resolving factual issues. D.C. Code 1951, §§ 22-2901, 24-301. *Douglas v. U.S.*, 239 F.2d 52, 1956 U.S. App. LEXIS 4124 (C.A.D.C. 1956).

Verdict of not guilty by reason of insanity simply means that despite fact that accused committed a crime, he is not criminally respon-

sible for its commission and, but for fact that he was not culpable, he would have been guilty; consequence of such a verdict is confinement to mental institution in lieu of criminal penalty. D.C. Code § 24-301(d)(1). *United States v. Tyler*, 376 A.2d 798, 1977 D.C. App. LEXIS 339 (1977).

Since burden is on defense to prove insanity, and since jury is always free to find a defendant sane even if Government does not contradict expert testimony by witnesses of its own, court should only in exceptional circumstances take case from jury by directing verdict of insanity and thus it was reversible error for trial judge to take issue of defendant's sanity from jury for in so doing court in effect allowed experts to decide issue of sanity, an issue which was for jury alone to decide. D.C. Code § 24-301(j). *United States v. Tyler*, 376 A.2d 798, 1977 D.C. App. LEXIS 339 (1977).

Acquittal by reason of insanity is determination of guilt, beyond reasonable doubt, of the acts charged. D.C. Code § 24-301(d)(1). *United*

States v. Shorter, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

Waiver.

Trial court was required to conduct an inquiry into whether defendant voluntarily and intelligently waived insanity defense to charges of arson, malicious destruction of property and cruelty to children, where there existed a number of factors that called into question defendant's sanity at the time of the offenses, there existed clear indications of defendant's mental illness during the time preceding the offenses, at the time of the offenses and during the period after the offenses, and while one conclusory criminal responsibility examination/productivity report found that defendant could be held criminally responsible for the offenses, report did not indicate how much time psychiatrist spent with defendant, what documents or records were reviewed or considered, if any, or what was the basis for its conclusion. *Phenis v. United States*, 909 A.2d 138, 2006 D.C. App. LEXIS 539 (2006).

§ 24-502. Commitment while serving sentence.

Any person while serving sentence of any court of the District of Columbia for crime, in a District of Columbia penal institution, and who, in the opinion of the Director of the Department of Corrections of the District of Columbia, is mentally ill, shall be referred by such Director to the psychiatrist functioning under § 24-306, and if such psychiatrist certifies that the person is mentally ill, this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness.

(Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 928; Aug. 9, 1955, 69 Stat. 611, ch. 673, § 2.)

Section references. — This section is referred to in § 11-2601.

Prior Codifications. — 1981 Ed., § 24-302. 1973 Ed., § 24-302.

CASE NOTES

ANALYSIS

Escape from hospital.
Hearings.
Release from hospital.
Transfers.

Escape from hospital.

Transfer of physical custody of defendant to a mental hospital from a District of Columbia county jail pursuant to statute authorizing director of the Department of Corrections to make such a transfer was not inconsistent with nor exclusive of the legal custody of the Attorney General, and therefore defendant's escape from such hospital was an escape from the

"custody of the Attorney General," within the Federal Escape Act. D.C. Code 1961, §§ 24-302, 24-303(b), 24-425; 18 U.S.C. §§ 751, 4242. *Frazier v. United States*, 339 F.2d 745, 1964 U.S. App. LEXIS 3851 (C.A.D.C. 1964), US Supreme Court certiorari denied by 379 U.S. 948, 85 S. Ct. 446, 13 L. Ed. 2d 545, 1964 U.S. LEXIS 42 (1964).

Hearings.

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act providing full system of procedural safeguards before finding of mental illness can be made. D.C. Code §§ 21-501 et seq., 21-543, 21-545 to

21-547, 24-106, 24-302, 24-303. *Matthews v. Hardy*, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

Under statute providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner can be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in 1964 Civil Commitment Act and same procedures for release from hospital as are embodied in the Act. D.C. Code §§ 21-501 et seq., 21-543, 21-545 to 21-547, 24-106, 24-302, 24-303. *Matthews v. Hardy*, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

That prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. D.C. Code §§ 21-545, 21-546 et seq., 24-302. *Matthews v. Hardy*, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

Prisoner is entitled to notice, judicial hearing, and, if requested, to jury trial before he can be involuntarily transferred from prison to mental institution. D.C. Code 1973, §§ 21-501 et seq., 24-302; U.S. Const. Amend. 14. In re *Hurt*, 437 A.2d 590, 1981 D.C. App. LEXIS 401 (1981).

Release from hospital.

Congress could not have believed that local District of Columbia prisoner would have any less need for continued treatment, or would be any less a danger to himself or society if released prematurely, than would a federal prisoner, and thus prisoner transferred from District of Columbia penal facility to mental hospital is not entitled to mandatory release at expiration of his short-term sentence unless he has been appropriately certified as being restored to mental health, especially in light of disparate treatment which different prisoners would receive as result of contrary decision.

D.C. Code §§ 24-302, 24-303; 18 U.S.C. § 4241. *Dobbs v. Neverson*, 393 A.2d 147, 1978 D.C. App. LEXIS 344 (1978).

Transfers.

If accused who pleads guilty is found to be in need of psychiatric assistance, he may be transferred to hospital for mentally ill following sentence. D.C. Code 1961, § 24-302. *Lynch v. Overholser*, 82 S.Ct. 1063, 1962 U.S. LEXIS 1228 (U.S. Dist. Col. 1962).

If prisoner serving sentence on conviction of crime is presently insane or of unsound mind or otherwise defective, prison authorities may and presumably should transfer him to an appropriate institution, so that he may be given treatment for his condition. 18 U.S.C. § 4241; D.C. Code 1951, § 24-302. *Carter v. U.S.*, 283 F.2d 200, 1960 U.S. App. LEXIS 3704 (C.A.D.C. 1960).

Statute and court rule authorizing emergency transfer of prisoner serving sentence to psychiatric hospital do not require warrant of commitment or detainer, with "warrant" being defined as written order directing arrest of person, issued by court, body, or official having authority to issue warrants, and "detainer" being defined as restraint of man's personal liberty against his will. D.C. Code 1981, § 24-302; Mental Health Rule 9(j). In re *Khamvongsa*, 697 A.2d 19, 1997 D.C. App. LEXIS 135 (1997).

Inmate who was transferred to psychiatric hospital on emergency basis was not entitled to statutory forfeiture of \$500 for failure to deliver copy of warrant of commitment or detainer to inmate within six hours; there was no warrant or detainer which could be produced, and inmate was provided with copies of all documents relevant to detention. D.C. Code 1981, §§ 16-1905, 24-302; Mental Health Rule 9(j). In re *Khamvongsa*, 697 A.2d 19, 1997 D.C. App. LEXIS 135 (1997).

Federal statute which deals with transfer of mentally ill persons and which provides that when federal prisoner is transferred to mental hospital, he is to be kept there until restored to sanity or health or until maximum sentence is served, is not integral component of federal good-time scheme but rather constitutes directive to hold entire good-time system in abeyance while another set of provisions, the federal transfer scheme, is being employed. D.C. Code § 24-302; 18 U.S.C. § 4241. *Dobbs v. Neverson*, 393 A.2d 147, 1978 D.C. App. LEXIS 344 (1978).

§ 24-503. Restoration to sanity.

(a) Repealed.

(b) When any person confined in a hospital for the mentally ill while serving sentence shall be restored to mental health within the opinion of the superin-

tendent of the hospital, the superintendent shall certify such fact to the Director of the Department of Corrections of the District of Columbia and such certification shall be sufficient to deliver such person to such Director according to his request.

(Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 929; Aug. 9, 1955, 69 Stat. 611, ch. 673, § 3; May 24, 2005, D.C. Law 15-358, § 202, 53 DCR 2015.)

Prior Codifications. — 1981 Ed., § 24-303. 1973 Ed., § 24-303.

Effect of amendments. — D.C. Law 15-358 repealed subsec. (a) which had read as follows: "(a) When any person confined in a hospital for the mentally ill, charged with crime and subject to be tried therefor, shall be found competent to stand trial in the opinion of the superintendent

of such hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge is pending, in accordance with the procedure specified in § 24-501, and deliver such person to the court according to its proper precept."

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-501.

CASE NOTES

ANALYSIS

Competency to stand trial.
Continuation of trial.
Psychiatric examinations.

Competency to stand trial.

Manslaughter sentences were not void because of absence of judicial adjudication that defendant was competent to stand trial, though he had previously been found to be insane, where certificate of superintendent of hospital stating that defendant had recovered his reason and was then of sound mind was filed in court before defendant pleaded guilty, and court ordered examination by two independent psychiatrists who reported that defendant was of sound mind at the time. 18 U.S.C. § 2255; D.C. Code 1951, § 24-303; D.C. Code 1940, §§ 24-301, 24-303. *Hunter v. United States*, 323 F.2d 625, 1963 U.S. App. LEXIS 4120 (C.A.D.C. 1963), writ of certiorari denied by 380 U.S. 918, 85 S. Ct. 912, 13 L. Ed. 2d 803, 1965 U.S. LEXIS 1819 (1965).

Continuation of trial.

Where accused was found to be of unsound mind and was committed to hospital, the verdict of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial but when he was restored to sanity, certificate of hospital superintendent to that effect removed the previous bar. D.C. Code 1940, §§ 24-301, 24-303. *Haislip v. U.S.*, 129 F.2d 53, 1942 U.S. App. LEXIS 3286 (1942).

The sole effect of statutes governing procedure in case of insanity of person charged with crime is to suspend the criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored,

the case may proceed as if the interregnum had not occurred. D.C. Code 1940, §§ 24-301, 24-303. *Haislip v. U.S.*, 129 F.2d 53, 1942 U.S. App. LEXIS 3286 (1942).

Where accused charged with incest was found by jury to be of unsound mind and was committed to hospital, upon discharge of accused from hospital as cured and in absence of anything showing invalidity of certificate of hospital superintendent, court was required to proceed with trial on the suspended criminal indictment and no further proceedings on the question of sanity were necessary. D.C. Code 1929, Tit. 16, § 20; D.C. Code 1940, §§ 24-301, 24-303. *Haislip v. U.S.*, 129 F.2d 53, 1942 U.S. App. LEXIS 3286 (1942).

Psychiatric examinations.

Patient in mental hospital has right to independent psychiatric assistance where psychiatric inquiry undertaken by state may be slanted to state's interest and patient should be afforded such assistance in suitable cases even though no such risk appears. D.C. Code 1961, §§ 24-302, 24-303(b); 18 U.S.C. § 2106. *Green v. United States*, 349 F.2d 203, 1965 U.S. App. LEXIS 5027 (C.A.D.C. 1965).

Denial of independent medical examination by patient who opposed his requested release from mental hospital to prison was error, where there had been no psychiatric inquiry as to his fitness for release, but inasmuch as it appeared that later he had been sent to hospital for psychiatric treatment, case would be remanded for further proceedings to clarify situation and to enable patient to make representations or file pleadings as would express his interest. D.C. Code 1961, §§ 24-302, 24-303(b); 18 U.S.C. § 2106. *Green v. United States*, 349 F.2d 203, 1965 U.S. App. LEXIS 5027 (C.A.D.C. 1965).

CHAPTER 5A. EVALUATION AND TREATMENT OF INCOMPETENT DEFENDANTS.

Sec.	Sec.
24-531.01. Definitions.	24-531.08. Dismissal.
24-531.02. Competence to proceed — Generally.	24-531.09. Involuntary medication.
24-531.03. Competence examinations.	24-531.10. Statements made during the course of competence examination or treatment.
24-531.04. Initial competence determination.	24-531.11. Tolling provisions.
24-531.05. Competence treatment.	24-531.12. Independent experts.
24-531.06. Court hearings during and after treatment.	24-531.13. General provisions.
24-531.07. Extending treatment pending the completion of a civil commitment proceeding.	

§ 24-531.01. Definitions.

For the purposes of this chapter, the term:

(1) “Competence” means that a defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational, as well as a factual, understanding of the proceedings against him or her.

(2) “Court” or “Superior Court” means the Superior Court of the District of Columbia.

(3) “Defendant” means a defendant in a criminal case or a respondent in a transfer proceeding.

(4) “DMH” means the Department of Mental Health.

(5) “Incompetent” means that, as a result of a mental disease or defect, a defendant does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

(6) “Inpatient treatment facility” means:

(A) Saint Elizabeths Hospital;

(B) Any other physically secure hospital for the examination or treatment of persons with mental illness; or

(C) Any physically secure or staff-secure facility for the examination, treatment, or habilitation of persons with mental retardation.

(7) “MRDDA” means the Mental Retardation and Developmental Disabilities Administration.

(8) “Transfer proceeding” means a proceeding pursuant to § 16-2307 to transfer a respondent who is alleged to be a delinquent in a juvenile case from the Family Court to the Criminal Division of the Superior Court of the District of Columbia to face adult criminal charges.

(9) “Treatment” means the services or supports provided to persons with mental illness or mental retardation, including services or supports that are offered or ordered to restore a person to competence, to assist a person in becoming competent, or to ensure that a person will be competent.

(10) “Treatment provider” means:

(A) The Department of Mental Health;

(B) The Mental Retardation and Developmental Disabilities Administration;

(C) An inpatient treatment facility as defined in paragraph (6) of this section; or

(D) Any other entity or individual designated by the DMH or MRDDA to provide evaluation, examination, treatment, or habilitation pursuant to this chapter that:

(i) Is duly licensed or certified under the laws of the District of Columbia to provide services or supports to persons with mental illness or mental retardation, or both; and

(ii) Has entered into an agreement with the District to provide mental health services or mental health supports or to provide services or supports to persons with mental retardation.

(May 24, 2005, D.C. Law 15-358, § 101, 52 DCR 2015.)

Legislative history of Law 15-358. — Law 15-358, the “Incompetent Defendants Criminal Commitment Act of 2004”, was introduced in Council and assigned Bill No. 15-967, which was referred to the Committee on Judiciary. The Bill was adopted on first and second read-

ings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-748 and transmitted to both Houses of Congress for its review. D.C. Law 15-358 became effective on May 2005.

§ 24-531.02. Competence to proceed — Generally.

(a) A defendant shall not be tried, be sentenced, enter a guilty plea, or be subject to revocation of probation or a transfer proceeding if the court determines that the defendant is incompetent.

(b)(1) Any proceeding to determine whether a defendant is incompetent shall not delay a determination of probable cause to believe that the defendant has committed the offense with which he or she is charged or the defendant’s eligibility for pretrial release or detention pursuant to subchapter I of Chapter 23 of Title 16 or subchapter II of Chapter 13 of Title 23.

(2) A defendant who is otherwise entitled to pretrial release shall not be involuntarily confined or taken into custody solely because the issue of the defendant’s competence has been raised and an examination or treatment has been ordered, unless the court determines that the defendant may be committed as an inpatient for a full competence examination pursuant to § 24-531.03(e) or for competence treatment pursuant to § 24-531.05.

(3) If the court orders a full competence examination or competence treatment on an outpatient basis, the court may order the defendant to appear at a designated time and place for the examination or treatment and may make the appearance a condition of the defendant’s pretrial release.

(c) The prosecutor or defense attorney may file any motion in the underlying criminal case, transfer proceeding, or probation revocation at any time while the defendant is incompetent. The court shall hear and decide any issue presented by the motion if the defendant’s presence is not constitutionally required or, as determined by the court, essential for a fair hearing.

(d) Nothing in this chapter shall be construed to prevent the government or any person from petitioning the court for involuntary civil commitment

pursuant to subchapter IV of Chapter 5 of Title 21 [§ 21-541 et seq.] or subchapter IV of Chapter 13 of Title 7 [§ 7-1304.01 et seq.].

(May 24, 2005, D.C. Law 15-358, § 102, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.03. Competence examinations.

(a) At any time after the prosecutor moves for a transfer from the Family Court to the Criminal Division of the Superior Court or charges a criminal offense by complaint, information, or indictment, either party may request, or the court on its own may order, that the defendant be examined to determine the defendant's competence.

(b) When the issue of a defendant's competence has been raised, the court shall order a preliminary screening examination before ordering a full competence examination pursuant to subsection (d) of this section.

(c)(1) A preliminary screening examination shall be performed either in the courthouse or on an outpatient basis by a psychiatrist or psychologist affiliated with the Department of Mental Health.

(2) The court shall schedule a return date or time for the defendant as early as possible following the order for the preliminary screening examination issued pursuant to subsection (b) of this section. In no case shall the return date be more than 3 business days after the order if the defendant is not released and no more than 5 business days after the order if the defendant is released.

(3) The examination shall be completed and a report submitted to the court in advance of the return date or time. The report shall indicate whether the defendant is competent, incompetent, or whether further evaluation is needed.

(4) The court shall consider the report of the preliminary screening examination, any arguments made by the parties, and any other information available to the court, and shall either:

(A) Find the defendant competent and resume the criminal case or transfer proceeding; or

(B) Order the defendant to submit to a full competence examination.

(d)(1) An order for a full competence examination pursuant to subsection (c)(4)(B) of this section shall direct the Department of Mental Health to examine the defendant. The full competence examination shall be performed by a psychiatrist or psychologist affiliated with the Department of Mental Health.

(2) The Department of Mental Health shall submit a written report to the court as to the defendant's competence.

(3) Any psychiatrist or psychologist who participated in the examination shall be available to testify at any hearing involving the defendant's competence.

(e) A full competence examination may be conducted on an inpatient or outpatient basis. The court may order the defendant committed to Saint

Elizabeths Hospital or to the Department of Mental Health for an inpatient examination only after a finding by the court that:

(1) Placement in an inpatient treatment facility is necessary in order to conduct an adequate examination; or

(2) The defendant is unlikely to comply with an order for an outpatient examination.

(f)(1) If the court orders the defendant committed as an inpatient for a full competence examination under subsection (e) of this section, the commitment for examination shall not exceed 30 days, except that the commitment may be extended for a 15-day period for good cause shown.

(2)(A) The Department of Mental Health shall submit a written report to the court:

(i) As soon as it reaches a conclusion that the defendant is competent or is incompetent; or

(ii) Any time it determines that the criteria for an inpatient examination set forth in subsection (e) of this section are no longer met.

(B) If the defendant is reported incompetent, the report shall include an opinion regarding the likelihood of the defendant's attaining competence in the foreseeable future or should state that no opinion has been formed on the likelihood of the defendant attaining competence.

(C) If a report indicates that the criteria for an inpatient examination set forth in subsection (e) of this section are no longer met, the court shall make new findings under subsection (e) of this section and, if it determines that the examination can be conducted on an outpatient basis, shall determine the defendant's eligibility for pretrial release pursuant to subchapter I of Chapter 23 of Title 16 or subchapter II of Chapter 13 of Title 23, if it has not previously done so. If necessary, the court may enter a new order for a full competence examination to be completed on an outpatient basis.

(D) If the court receives either report required under subparagraph (A) of this paragraph more than one court day prior to the scheduled return date, the court shall have the defendant brought before the appropriate judge on the next court day following receipt of the report for appropriate proceedings under § 24-531.04.

(g)(1) If the court orders a full competence examination to be conducted on an outpatient basis, it shall be completed and a report submitted to the court in advance of the defendant's return date as determined under § 24-531.04(a).

(2) The Department of Mental Health shall submit a written report to the court at any time it determines that the criteria for an inpatient examination set forth in subsection (e) of this section are met. If the court receives such a report, it shall schedule the matter for a hearing as soon as practicable, to determine the appropriate disposition under subsection (e) of this section.

(May 24, 2005, D.C. Law 15-358, § 103, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.04. Initial competence determination.

(a)(1) A hearing to determine competence of a defendant shall be set:

(A) No more than 30 days from the date the competence examination is ordered for a defendant who is detained or committed for an inpatient examination; and

(B) No more than 45 days from the date the competence examination is ordered for a defendant who is released and ordered to participate in an outpatient examination.

(2) On its own motion or the motion of one of the parties, and for good cause shown, the court may extend the time for the hearing by not more than 15 days.

(b) A defendant is presumed to be competent. Incompetence must be established by a preponderance of the evidence. The burden of proof is on the party asserting incompetence. The court may call its own witnesses and conduct its own inquiry.

(c)(1) At the conclusion of the hearing, the court shall:

(A) Find that the defendant is competent; or

(B) Find that the defendant is incompetent and:

(i) Is likely to attain competence in the foreseeable future or additional time is necessary to assess whether the defendant is likely to attain competence in the foreseeable future; or

(ii) Is unlikely to attain competence in the foreseeable future.

(2) If the court finds the defendant is competent, it shall resume the criminal case or transfer proceeding.

(3) If the court finds the defendant is incompetent and makes either of the findings under paragraph (1)(B)(i) of this subsection, the court shall order treatment for the restoration of competence.

(4) If the court finds the defendant is incompetent and unlikely to attain competence in the foreseeable future, the court shall order either the release of the defendant or further treatment pursuant to § 24-531.06(c)(4).

(May 24, 2005, D.C. Law 15-358, § 104, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.05. Competence treatment.

(a)(1) If the court makes a finding pursuant to § 24-531.04(c)(1)(B)(i), the court may order the defendant to participate in treatment for restoration of competence on an inpatient or outpatient basis. The court shall order treatment in the least restrictive setting consistent with the goal of restoration of competence.

(2) The court may order inpatient treatment if it finds that:

(A) Placement in an inpatient treatment facility setting is necessary in order to provide appropriate treatment; or

(B) The defendant is unlikely to comply with an order for outpatient treatment.

(3) If the court orders treatment on an outpatient basis, it shall direct DMH or MRDDA, or both, to designate an appropriate treatment provider. If the court orders treatment on an inpatient basis it shall commit the defendant to Saint Elizabeths Hospital or direct DMH or MRDDA, or both, to designate an appropriate inpatient treatment facility.

(b) Except as provided in subsections (c) and (d) of this section, the court may order the defendant to undergo competence treatment on an inpatient basis for one or more periods of time, not to exceed 180 days in the aggregate.

(c) Except as provided in subsection (d) of this section, the court may order a defendant charged with a crime of violence, as defined in § 23-1331(4), to undergo competence treatment on an inpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds:

(1) There is a substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal; and

(2) Inpatient treatment is the least restrictive setting based on the criteria set forth in subsection (a) of this section.

(d)(1) Excluding extended treatment pending the completion of civil commitment proceedings ordered pursuant to § 24-531.06(c)(4) or § 24-531.07(a)(2), inpatient treatment may last no longer than the maximum possible sentence that the defendant could have received if convicted of the pending charges.

(2) If, during inpatient treatment ordered to restore a defendant to competence, the maximum possible sentence the defendant could have received if convicted of the pending charges expires, the court shall either release the defendant or, where appropriate, enter an order for extended treatment pursuant to § 24-531.06(c)(4) or § 24-531.07(a)(2).

(3) The defendant shall be awarded credit against any term of imprisonment imposed after being found competent for any time during which he was committed to an inpatient treatment facility for either a competence examination or competence treatment.

(e)(1) The court may order the defendant to undergo competence treatment on an outpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds there is substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal.

(2) The Department of Mental Health or the treatment provider shall submit a written report to the court at any time it determines that the criteria for inpatient treatment set forth in subsection (a) of this section are met.

(May 24, 2005, D.C. Law 15-358, § 105, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.06. Court hearings during and after treatment.

(a) The Court shall hold a prompt hearing, with reasonable notice of such hearing given to the prosecuting attorney, the defendant, and the defendant's

attorney of record, and make a new finding as to the defendant's competence when:

(1) Any period of treatment ordered under § 24-531.05(b), (c), or (e) is completed; or

(2) The treatment provider reports to the court that reasonable grounds exist to believe that:

(A) An incompetent defendant has attained competence;

(B) There is no longer a substantial probability that a defendant will attain competence during the allowable treatment period;

(C) If the defendant is committed to an inpatient treatment facility, such commitment is no longer the least restrictive setting considering the factors in § 24-531.05(a); or

(D) If the defendant has been ordered to undergo competence treatment on an outpatient basis, such a setting is no longer appropriate considering the factors in § 24-531.05(a).

(b) In advance of any hearing held pursuant to subsection (a) of this section, the treatment provider shall submit a written report to the court addressing:

(1) The defendant's competence, including any progress or lack thereof made toward attaining competence;

(2) Whether there is a substantial probability that the defendant will attain competence during the foreseeable future, or make substantial progress toward that goal;

(3) If the defendant is committed to an inpatient facility, whether such commitment remains the least restrictive setting considering the factors in § 24-531.05(a); and

(4) If the defendant has been ordered to undergo treatment on an outpatient basis, whether such a setting is no longer appropriate considering the factors in § 24-531.05(a).

(c)(1) At the conclusion of a hearing held pursuant to subsection (a) of this section, the court shall:

(A) Find that the defendant is competent; or

(B) Find that the defendant is incompetent and:

(i) There is a substantial probability that the defendant will attain competence or make substantial progress toward that goal with an additional period of time; or

(ii) There is no substantial probability that he or she will attain competence or make substantial progress toward that goal in the foreseeable future.

(2) If the court finds the defendant is competent, it shall order the criminal case or transfer proceeding to be resumed.

(3) If the court finds the defendant is incompetent pursuant to paragraph (1)(B)(i) of this subsection, the court shall order treatment for an additional period of time in accordance with § 24-531.05(b), (c), or (e), after making a finding as to the least restrictive placement for treatment pursuant to § 24-531.05(a).

(4) If the court finds the defendant is incompetent pursuant to paragraph (1)(B)(ii) of this subsection, the court shall either order the release of the

defendant or, where appropriate, enter an order for treatment pursuant to § 24-531.05(a) for up to 30 days pending the filing of a petition for civil commitment pursuant to subchapter IV of Chapter 5 of Title 21 or subchapter IV of Chapter 13 of Title 7. The court also may order treatment pursuant to § 24-531.07(a)(2) for such period as is necessary for the completion of the civil commitment proceedings.

(May 24, 2005, D.C. Law 15-358, § 106, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.07. Extending treatment pending the completion of a civil commitment proceeding.

(a) Thirty days after the court has ordered extended treatment pursuant to § 24-531.06(c)(4), the court shall hold a status hearing to determine whether civil commitment proceedings have been initiated pursuant to § 21-541 or subchapter IV of Chapter 13 of Title 7.

(1) If a petition for civil commitment has not been filed prior to the hearing, the court shall release the defendant from treatment unless extraordinary cause is shown for the failure to file the petition, in which case the court may grant an additional 5 days within which to file a petition.

(2) If a petition for civil commitment has been filed, the court may either order that treatment be continued until the entry of a final order in the civil commitment case or release the defendant from treatment.

(b)(1) If the court orders the release of a person in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility, and a petition for civil commitment has been filed pursuant to subchapter IV of Chapter 13 of Title 7, the court shall remand the person to the inpatient treatment facility and the inpatient treatment facility may detain the person pending a hearing on the petition conducted pursuant to § 7-1303.12a.

(2) Within 7 days of the remand order, a person so detained may request a probable cause hearing on the defendant's continued detention before the Family Court of the Superior Court of the District of Columbia, in which case a hearing shall be held within 24 hours after the receipt of the request.

(c)(1) If the court orders the release of a person in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility, and a petition for civil commitment has been filed pursuant to § 21-541, the court shall remand the person to the inpatient treatment facility and the inpatient treatment facility may detain the person pending a hearing on the petition conducted pursuant to § 21-542.

(2) Within 7 days of the remand order, a person so detained may request a probable cause hearing on the person's continued detention before the Family Court of the Superior Court of the District of Columbia pursuant to § 21-525, in which case a hearing shall be held within 24 hours after the receipt of the request.

(d) If the court orders the release of a defendant in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility,

and a petition for civil commitment has not been filed pursuant to § 21-541 or subchapter IV of Chapter 13 of Title 7, the court may stay the defendant's release for a period not to exceed 48 hours and remand the person to Saint Elizabeths Hospital or other inpatient treatment facility for the period of the stay so that the Department of Mental Health or the Mental Retardation and Development Disabilities Administration [now the Department on Disability Services], or both, may, where appropriate, file a petition for the defendant's involuntary commitment to either the Department of Mental Health or to the Mental Retardation and Developmental Disabilities Administration [now the Department on Disability Services], or both.

(May 24, 2005, D.C. Law 15-358, § 107, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.08. Dismissal.

(a) If a defendant charged with any offense other than a crime of violence, as defined in § 23-1331(4), does not attain competence within 180 days of an order for treatment pursuant to § 24-531.05, the charge shall be dismissed without prejudice upon:

(1) The completion of civil commitment proceedings, if a petition for commitment was filed; or

(2) A determination by the court that the time within which the government must file a petition for civil commitment has expired and a petition for civil commitment has not been filed.

(b) If a defendant charged with a crime of violence, as defined in § 23-1331(4), except murder, first degree sexual abuse, or first degree child sexual abuse, has not attained competence within 5 years of the initial order for treatment pursuant to § 24-531.04, the charge shall be dismissed without prejudice.

(c) Any charge dismissed pursuant to subsection (a) or (b) of this section may be refiled if, at any time within the statute of limitations, the defendant attains competence; provided, that a defendant may not be arrested or detained on such a charge unless a court has found that the defendant is competent.

(d) Nothing in this section shall preclude the prosecutor or the defendant from moving to dismiss a case at an earlier time on any appropriate grounds.

(May 24, 2005, D.C. Law 15-358, § 108, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.09. Involuntary medication.

(a) Except as set forth in subsection (b) of this section, a defendant who is ordered to submit to a competence examination under § 24-531.03, or a defendant who is determined after a hearing to be incompetent and is ordered

by the court to undergo treatment pursuant to § 24-531.05 or § 24-531.06, may not be administered medication involuntarily if the sole purpose for doing so would be to render the defendant competent. For any other purpose, the defendant may be administered medication without his or her consent consistent with § 7-1231.08, and the regulations promulgated thereunder.

(b)(1) The Court may order the involuntary administration of medication for the sole purpose of rendering the defendant competent only if:

(A) It orders the defendant to participate in treatment for restoration of competence pursuant to § 24-531.05; and

(B) The Court determines that the government's interest in bringing the defendant to trial or proceeding with sentencing, probation revocation, or transfer outweighs the defendant's interest in refusing medication to render him or her competent.

(2) In making the determination required by paragraph 1(B) of this subsection, the court must find that:

(A) The defendant has been charged with a dangerous crime or a crime of violence as those terms are defined in § 23-1331(3) and (4), respectively;

(B) The administration of medication is substantially likely to render the defendant competent;

(C) The administration of medication is substantially unlikely to have side effects that will significantly interfere with the defendant's ability to assist counsel in conducting a defense;

(D) Involuntary medication is necessary to further the government's interest because any less intrusive treatments alternatives are unlikely to render the defendant competent; and

(E) The administration of medication is medically appropriate.

(May 24, 2005, D.C. Law 15-358, § 109, 52 DCR 2015; Mar. 2, 2007, D.C. Law 16-191, § 46, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsec. (a), validated a previously made technical correction.

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006", was introduced in Council and assigned

Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 24-531.10. Statements made during the course of competence examination or treatment.

(a) Any statement that is obtained during a court-ordered examination, evaluation, or treatment, or any evidence resulting from that statement, is not admissible at any proceeding to determine a defendant's guilt or innocence or to determine an appropriate sentence, except when the defendant puts his competence or mental health at issue in the proceeding.

(b) Any statement made by the defendant during a court-ordered examination, evaluation, or treatment, or any evidence resulting from that statement, concerning any other event or transaction is not admissible at any proceeding

to determine the defendant's guilt or innocence of any other criminal charges or to determine an appropriate sentence based on those events or transactions, except when the defendant puts his competence or mental health concerning those events or transactions at issue in any legal proceeding.

(May 24, 2005, D.C. Law 15-358, § 110, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.11. Tolling provisions.

In computing any time period in this chapter, the court shall exclude the following periods:

(1) Any time in which the defendant is unable to participate in a preliminary screening examination, a full competence examination, or treatment to restore competence due to physical incapacity;

(2) Any time in which the defendant fails or refuses to participate in a preliminary screening examination, a full competence examination, or treatment to restore competence;

(3) Any time due to the defendant's failure to appear for a preliminary screening examination, a full competence examination, or treatment to restore competence; and

(4) Any time from the filing of a motion or petition through its disposition, including any appeals, which prevents or delays the conduct of a preliminary screening examination, a full competence examination, or treatment to restore competence, including involuntary medication.

(May 24, 2005, D.C. Law 15-358, § 111, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.12. Independent experts.

At any time from the initial court appearance through the conclusion of the transfer proceeding or the criminal case, the Court may, upon request, authorize either the prosecutor or defense attorney, or both, to engage one or more independent experts to examine the defendant for competence and any related issues.

(May 24, 2005, D.C. Law 15-358, § 112, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

§ 24-531.13. General provisions.

(a) Nothing in this chapter shall preclude a person confined under the authority of this chapter from establishing his or her eligibility for release under the provisions of this chapter by a writ of habeas corpus.

(b) The provisions of this chapter shall supersede in the District of Columbia

the provisions of any federal statutes or parts thereof inconsistent with this chapter.

(c) When a person has been ordered confined in a hospital for the mentally ill pursuant to this chapter and has escaped from such hospital, the court which ordered confinement shall, upon request of the government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital.

(May 24, 2005, D.C. Law 15-358, § 113, 52 DCR 2015.)

Legislative history of Law 15-358. — For Law 15-358, see notes following § 24-531.01.

CHAPTER 6. REHABILITATION OF ALCOHOLICS.

Subchapter I. General

Sec.

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24-631 to 24-643. [Omitted].

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*Subchapter I. General.***§ 24-601. Purpose.**

The purpose of this subchapter is to establish a comprehensive program in the District of Columbia for the prevention of alcoholism and the rehabilitation of alcoholics, discourage abuse of alcoholic beverages, and provide for medical, psychiatric, and other scientific treatment of chronic alcoholics; to minimize the deleterious effects of excessive drinking; to reduce the financial burden imposed upon the people of the District of Columbia by the abusive use of alcoholic beverages, as is reflected in accidents, inefficiency of personnel, and absenteeism; and to establish methods of handling intoxication and alcoholism that will benefit the individual involved and more fully protect the public. In order to accomplish this purpose and alleviate intoxication and chronic alcoholism, all public officials in the District of Columbia shall take cognizance of the fact that public intoxication shall be handled as a public health problem rather than as a criminal offense, and that a chronic alcoholic is a sick person who needs, is entitled to, and shall be provided appropriate medical, psychiatric, institutional, advisory, and rehabilitative treatment services of the highest caliber for his illness.

(Aug. 4, 1947, 61 Stat. 744, ch. 472, § 1; Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-521. 1973 Ed., § 24-521.

CASE NOTES**In general.**

A chronic alcoholic, when charged with any misdemeanor other than a charge of public intoxication under § 25-128, may voluntarily request civil commitment in lieu of criminal

prosecution for such misdemeanor, and the court may on its own initiative civilly commit a chronic alcoholic who has been charged with a violation of § 25-128. *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

§ 24-602. Definitions.

For purposes of this subchapter:

(1) The term "chronic alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that:

(A) They injure his health or interfere with his social or economic functioning; or

(B) He has lost the power of self-control with respect to the use of such beverages.

(2) The term "Court" means the Superior Court of the District of Columbia.

(3) The term "Mayor" means the Mayor of the District of Columbia.

(Aug. 4, 1947, 61 Stat. 744, ch. 472, § 2; Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 3(a); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Section references. — This section is referred to in §§ 47-2885.11 and 3-509.

Prior Codifications. — 1981 Ed., § 24-522. 1973 Ed., § 24-522.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Chronic alcoholic.

That facilities contemplated by Act of Congress pertaining to rehabilitation of alcoholics had not been made available did not detract from legal effect of provisions of 1947 Act defin-

ing nature of sickness. D.C. Code 1961, §§ 24-501 et seq., 25-128 and (a). *Easter v. District of Columbia*, 361 F.2d 50, 1966 U.S. App. LEXIS 6670 (C.A.D.C. 1966).

§ 24-603. Public health program; delegation of powers by Mayor.

(a) The Mayor shall establish and maintain an effective public health program in the District of Columbia to provide a continuum of appropriate services to intoxicated persons and chronic alcoholics. Such program shall coordinate all District of Columbia services for intoxicated persons and chronic alcoholics and shall include at least the following facilities which shall be available to both males and females:

(1) One or more detoxification centers, which shall be located within the District of Columbia, which shall have a total capacity of not more than 150 beds, and which shall provide appropriate medical services for intoxicated persons, including initial examination, diagnosis, and classification;

(2) An inpatient extended care facility which shall have a capacity of not more than 800 beds and which shall provide intensive study, treatment, and

rehabilitation of chronic alcoholics. Such facility shall not admit intoxicated persons; and

(3) Outpatient aftercare facilities which may include clinics, social centers, vocational rehabilitation services, and supportive residential facilities and which shall have a total capacity of not more than 600 beds.

(b) The Mayor may:

(1) Establish or designate an agency of the District of Columbia government; and

(2) Designate any officer or employee of the District of Columbia government to carry out any of his functions, powers, and duties under this subchapter.

(Aug. 4, 1947, 61 Stat. 744, ch. 472, § 3; Aug. 3, 1968, 82 Stat. 619, Pub. L. 90-452, § 3(a); June 3, 1997, D.C. Law 11-275, § 18, 44 DCR 1408.)

Section references. — This section is referred to in §§ 24-604, 24-605, and 24-606.

Prior Codifications. — 1981 Ed., § 24-523. 1973 Ed., § 24-523.

Legislative history of Law 11-275. — Law 11-275, the “Second Criminal Code Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

That facilities contemplated by Act of Congress pertaining to rehabilitation of alcoholics had not been made available did not detract from legal effect of provisions of 1947 Act defin-

ing nature of sickness. D.C. Code 1961, §§ 24-501 et seq., 25-128 and (a). *Easter v. District of Columbia*, 361 F.2d 50, 1966 U.S. App. LEXIS 6670 (C.A.D.C. 1966).

§ 24-604. Public intoxication; confidential records.

(a) Except as otherwise provided in subsection (b) of this section, any person who is intoxicated in public: (1) may be taken or sent to his home or to a public or private health facility; or (2) if not taken or sent to his home or such facility under clause (1) of this subsection, shall be taken to a detoxification center, by the Mayor. Reasonable measures may be taken to ascertain that public transportation used for such purposes shall be paid for by such person in advance. Any intoxicated person may voluntarily come to a detoxification center for medical attention. The medical officer in charge of a detoxification center shall have the authority to determine whether a person shall be

admitted to such center as a patient, or whether he should be referred to another health facility. The medical officer in charge of such center shall have the authority to require any person admitted as a patient under this subsection to remain at such center until he is sober and no longer incapacitated, but in any event no longer than 72 hours after his admission as a patient. If the medical officer concludes that such person should receive treatment at a different facility, he shall arrange for such treatment and for transportation to that facility. A detoxification center may provide medical services to a person who is not admitted as a patient. A patient in a detoxification center shall be encouraged to consent to an intensive diagnosis for alcoholism and to treatment at the inpatient and outpatient facilities authorized in § 24-603(a).

(b)(1) Any person who is taken into custody for violating § 25-1001 shall be brought to a detoxification center where he shall either be admitted as a patient or transported by the Mayor to another appropriate medical facility for treatment. The police officer who took such person into custody for violating such section shall leave a violation notice for such person with the medical officer in charge of the detoxification center. After such person is sober and no longer incapacitated, the medical officer in charge of the detoxification center shall detain him as long as is reasonably necessary to conduct a diagnosis for alcoholism. If such person is diagnosed as a chronic alcoholic the medical officer shall, after a review of such person's record, recommend to the Corporation Counsel whether a criminal charge should be filed against such person for violating such section in order to institute civil commitment proceedings under § 24-607. If such a criminal charge is not filed, no entry relating to such person's arrest for violating such section shall be made on any arrest or other criminal record. If the Corporation Counsel concludes that a criminal charge should be filed, the medical officer in charge of the detoxification center shall deliver to such person the violation notice that had been left with him. If such person is not diagnosed as a chronic alcoholic the medical officer in charge of the detoxification center shall deliver to him the violation notice that had been left with the medical officer and such person shall, after he is released by the center, be handled as in any other criminal case.

(2) Any person who is taken into custody in the District of Columbia for violating any criminal provision applicable in the District of Columbia (other than such § 25-1001) and who appears to be intoxicated may be taken by the police to a detoxification center where he may be admitted as a patient for an immediate medical evaluation of his condition. As soon as it is determined that he is not in medical danger he shall be handled by the police as in any other criminal case. If his health is in danger, he may be detained either at the detoxification center or at some other appropriate medical facility until the danger has passed, and he shall then be handled as in any other criminal case. Such security conditions shall be maintained as are commensurate with the seriousness of the offense. In appropriate cases where there is no danger to the safety of any person, the police may leave with the medical officer in charge of the detoxification center a violation notice which shall be delivered to such person when he is released from the detoxification center.

(c) The registration and other records of a detoxification center shall remain confidential and may be disclosed only:

(A) To medical personnel for purposes of:

- (i) Diagnosis;
- (ii) Treatment; or
- (iii) Court testimony;

(B) To police personnel for purposes of investigation of criminal offenses and complaints against police action;

(C) To authorized personnel for purposes of pre-sentence reports; or

(D) With the prior written consent of the client, for the purposes of and in accordance with Chapter 2A of this title.

(d) The Mayor shall promptly develop, in cooperation with the police, procedures for taking or sending an intoxicated person to a detoxification center, his residence, or a public or private health facility if no criminal charge is brought against such person.

(Aug. 4, 1947, 61 Stat. 745, ch. 472, § 4; Aug. 3, 1968, 82 Stat. 619, Pub. L. 90-452, § 3(a); Mar. 13, 2004, D.C. Law 15-105, § 58, 51 DCR 881; Dec. 4, 2010, D.C. Law 18-273, § 209, 57 DCR 7171.)

Section references. — This section is referred to in § 5-115.03.

Prior Codifications. — 1981 Ed., § 24-524.
1973 Ed., § 24-524.

Effect of amendments. — D.C. Law 15-105, in subsec. (b), substituted “§ 25-1001” for “§ 25-128” in pars. (1) and (2).

D.C. Law 18-273 rewrote subsec. (c), which had read as follows: “(c) The registration and other records of a detoxification center shall remain confidential, and may be disclosed only to medical personnel for purposes of diagnosis, treatment, and court testimony, to police personnel for purposes of investigation of criminal offenses and complaints against police action, and to authorized personnel for purposes of presentence reports.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 209 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 209 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C.

Law 15-105 became effective on March 13, 2004.

Legislative history of Law 18-273. — Law 18-273, the “Data-Sharing and Information Coordination Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-356 which was referred to the Committee on Health and Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 29, 2010, respectively. Signed by the Mayor on July 20, 2010, it was assigned Act No. 18-489 and transmitted to both Houses of Congress for its review. D.C. Law 18-273 became effective on December 4, 2010.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-605. Voluntary admission to inpatient centers; information program; involuntary detention.

(a) Any person may voluntarily request admission to the inpatient center authorized in § 24-603(a), and no person committed under § 24-607 shall take precedence for purposes of admission over a person who voluntarily requests admission unless the person so committed is found by the Court to endanger the public safety. The medical officer in charge of the inpatient center is authorized to determine who shall be admitted as a patient. A complete medical, social, occupational, and family history shall be obtained as part of the diagnosis and classification at the inpatient center, and an effort shall also be made to obtain copies of all pertinent records from other agencies, institutions, and medical facilities in order to develop a complete and permanent history on each patient.

(b) A program shall be developed for patients of the inpatient center who are diagnosed not to be chronic alcoholics which program shall be designed to inform them of the dangers of alcoholism.

(c) In the case of a patient of the inpatient center who is diagnosed as a chronic alcoholic, he shall be given immediate, intensive treatment for chronic alcoholism at the inpatient center.

(d) No patient may be detained at the inpatient center without his consent, except under an order of the Court issued under § 24-607. Reasonable regulations for checking out of the inpatient center and for providing transportation may be adopted. If a patient checks out of the center against medical advice, he may be readmitted at the discretion of the medical officer in charge of the center.

(Aug. 4, 1947, 61 Stat. 745, ch. 472, § 5; Aug. 3, 1968, 82 Stat. 620, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-525. 1973 Ed., § 24-525.

§ 24-606. Outpatient treatment; treatment where recovery unlikely; coordination of treatment programs.

(a) A chronic alcoholic shall be encouraged to consent to outpatient and aftercare treatment for his illness at the types of facilities authorized in § 24-603(a). Any person may voluntarily request admission to outpatient treatment. The medical officer in charge of the outpatient treatment is authorized to determine who shall be admitted to such treatment. There shall be 1 central outpatient treatment office which shall coordinate the operation of all outpatient facilities, and particularly shall be responsible for locating residential facilities for indigent intoxicated persons and alcoholics.

(b) For chronic alcoholics for whom recovery is unlikely, supporting services and residential facilities shall be provided.

(c) The Mayor shall be responsible, through the outpatient treatment programs, for coordinating all public and private community efforts, including

welfare services, vocational rehabilitation, and job placement, to integrate chronic alcoholics back into society as productive citizens.

(d) No person shall be required to participate in outpatient treatment without his consent unless required under an order of the Court issued under § 24-607. Reasonable requirements may be placed upon such a person as conditions for his participation in such treatment. If a patient withdraws from outpatient treatment against medical advice, he may be readmitted at the discretion of the medical officer in charge of outpatient treatment.

(Aug. 4, 1947, 61 Stat. 745, ch. 472, § 6; Aug. 3, 1968, 82 Stat. 621, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-526. 1973 Ed., § 24-526.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

A chronic alcoholic, when charged with any misdemeanor other than a charge of public intoxication under § 25-128, may voluntarily request civil commitment in lieu of criminal

prosecution for such misdemeanor, and the court may on its own initiative civilly commit a chronic alcoholic who has been charged with a violation of § 25-128. *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

§ 24-607. Commitment by Court order.

(a) The Court may, on a petition of the Corporation Counsel on behalf of the Mayor, filed and heard before the period of detention for detoxification and diagnosis expires, order a person to be committed to the custody of the Mayor for inpatient treatment and care if: (1) the Court determines that the person is a chronic alcoholic and that as a result of chronic or acute intoxication such person is in immediate danger of substantial physical harm; and (2) such person received notice of the filing of such petition within a reasonable time before the hearing held by the Court. The period of such commitment, computed from the date of admission to a detoxification center, shall not exceed: (1) thirty days in the case of the first or second such commitment within any 24-month period; or (2) ninety days in the case of the third or subsequent such commitment within any 24-month period.

(b)(1)(A) The Court may, after making the findings prescribed in paragraph (2) of this subsection, commit to the custody of the Mayor for treatment and care for up to a specified period of time a chronic alcoholic who:

(i) Is charged with any misdemeanor and who, prior to trial for such

misdemeanor, voluntarily requests such treatment in lieu of criminal prosecution for such misdemeanor;

(ii) Is charged with a violation of § 25-128 and is acquitted on the ground of chronic alcoholism; or

(iii) Is convicted of a violation of such § 25-128.

(B) The term of commitment of a chronic alcoholic ordered by the Court under this subsection may not exceed the maximum term of imprisonment authorized for the misdemeanor for which the chronic alcoholic was charged.

(2)(A) Before any person may be committed under this subsection, the Court shall, after a medical diagnosis and a civil hearing, find that:

(i) The person is a chronic alcoholic;

(ii) Adequate and appropriate treatment provided by the Mayor is available for the person; and

(iii) In the case of a person described in sub-subparagraph (iii) of subparagraph (A) of paragraph (1) of this subsection, he constitutes a continuing danger to the safety of himself or of other persons.

(B) The Court shall give reasonable notice of such hearing to the person sought to be committed and his attorney. In the case of a person described in sub-subparagraph (iii) of subparagraph (A) of paragraph (1) of this subsection, if the Court does not make the finding described in sub-subparagraph (ii) of subparagraph (A) of this paragraph, the Court may sentence the person to a penal institution pending the availability of such treatment, but for a period not to exceed the maximum term of imprisonment authorized for a violation of such § 25-128.

(c) A committed person may challenge by a petition for a writ of habeas corpus the applicability of such findings, except that no more than 1 such petition may be filed in any 6-month period. The limitation prescribed in the preceding sentence shall not apply in the case of petitions based on newly discovered evidence.

(d) The Mayor may transfer a committed person who has been adjudged a continuing danger to the safety of himself or of other persons from inpatient to outpatient status only with permission of the Court. The Mayor may transfer any other committed person from inpatient to outpatient status, and any committed person from outpatient to inpatient status, without permission of the Court, but may not release a committed person without permission of the Court.

(e) If any person subject to a commitment proceeding initiated under this section does not have an attorney and cannot afford one, the Court shall appoint one to represent him.

(Aug. 4, 1947, 61 Stat. 745, ch. 472, § 7; Aug. 3, 1968, 82 Stat. 621, Pub. L. 90-452, § 3(a).)

Section references. — This section is referred to in §§ 2-1602, 24-604, 24-605, 24-606, and 24-614.

Prior Codifications. — 1981 Ed., § 24-527.
1973 Ed., § 24-527.

References in text. — Section 25-128, referred to in subsection (b)(1)(A)(ii) and (iii) and (2)(B) of this section, is part of Title 25, D.C. Official Code, which title was amended and enacted by D.C. Law 13-298, effective May 3,

2001. For disposition of the subject matter of former Title 25, see the Disposition Table preceding § 25-101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

The decision whether or not to commit a defendant in lieu of prosecution is confined to the sound discretion of the trial judge. *United States v. Cureton*, 110 WLR 245 (Super. Ct. 1982).

A chronic alcoholic, when charged with any misdemeanor other than a charge of public

intoxication under § 25-128, may voluntarily request civil commitment in lieu of criminal prosecution for such misdemeanor, and the court may on its own initiative civilly commit a chronic alcoholic who has been charged with a violation of § 25-128. *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

§ 24-608. Limitation of application of chapter.

The provisions of this subchapter shall apply to chronic alcoholics who have not been determined to be mentally ill. The handling of a chronic alcoholic who has been determined to be mentally ill shall be governed by the provisions of Chapter 5 of Title 21.

(Aug. 4, 1947, 61 Stat. 745, ch. 472, § 8; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-528. 1973 Ed., § 24-528.

§ 24-609. Authority of Mayor to contract.

The Mayor may contract with any appropriate public or private agency, organization, or institution that has proper and adequate treatment facilities, programs, and personnel, in order to carry out the purposes of this subchapter.

(Aug. 4, 1947, 61 Stat. 745, ch. 472, § 9; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-529. 1973 Ed., § 24-529.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-610. Programs for alcoholic employees.

(a) The Mayor shall be responsible for developing and maintaining, in cooperation with other District of Columbia agencies and departments, programs for the prevention and treatment of alcoholism and the rehabilitation of alcoholics among District of Columbia employees consistent with the intent of this subchapter.

(b) The Mayor shall also be responsible for fostering alcoholism rehabilitation programs in private industry in the District of Columbia.

(Aug. 4, 1947, 61 Stat. 746, ch. 472, § 10; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-530. 1973 Ed., § 24-530.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-611. Program for inmates in correctional institutions.

The Mayor shall be responsible for establishing and maintaining a program for the prevention and treatment of alcoholism and the rehabilitation of alcoholics in correctional institutions in the District of Columbia.

(Aug. 4, 1947, 61 Stat. 746, ch. 472, § 11; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-531. 1973 Ed., § 24-531.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-612. Program for juveniles and young adults.

The Mayor shall be responsible for establishing and maintaining, in cooperation with the schools, the police, the courts, and other public agencies in the District of Columbia, an effective program for the prevention of intemperance and alcoholism, and the treatment and rehabilitation of incipient alcoholics, among juveniles and young adults.

(Aug. 4, 1947, 61 Stat. 746, ch. 472, § 12; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-532.
1973 Ed., § 24-532.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-613. Evaluations and recommendations by Mayor; publications; comprehensive plan.

(a) The Mayor shall maintain a continuing evaluation of his programs and shall conduct pilot and demonstration projects to improve his programs, shall from time to time submit to the Congress such recommendations for programs for the District of Columbia to further the rehabilitation of chronic alcoholics, prevent the excessive and abusive use of alcoholic beverages, and promote moderation in the use of such beverages.

(b) The Mayor shall prepare and publish materials, data, information, and statistics that relate to the problems of intoxication and alcoholism in the District of Columbia and that may be used in a program of public education directed toward the prevention of the excessive and abusive use of alcoholic beverages.

(c) The Mayor shall develop a comprehensive plan to implement the objectives and policies of this subchapter, and in so doing shall consult and collaborate with appropriate public and private agencies, institutions, and organizations in the District of Columbia, and with the Secretary of Health and Human Services. In developing such plan, the Mayor shall make every effort to utilize funds, programs, and facilities authorized under federal legislation.

(Aug. 4, 1947, 61 Stat. 746, ch. 472, § 13; Aug. 3, 1968, 82 Stat. 623, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-533.
1973 Ed., § 24-533.

Transfer of Functions. — The functions of the Department of Health, Education and Wel-

fare was transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-614. Cost of treatment.

(a)(1) Except as otherwise provided in paragraph (2) of this subsection, if a person receives care, treatment, or any other services under this subchapter: (A) such person (or his estate); and (B) such person's father, mother, spouse, or adult children, shall be liable (each according to his ability, as determined by the Mayor, and in the order listed above) to reimburse the District of Columbia, for all or such part of the actual cost of providing such services, as the Mayor may require. The liability of any person described in clause (B) of this paragraph shall be determined by the Mayor after notice to such person that services have been or will be rendered under this subchapter and the Mayor has found that such person is able to reimburse the District of Columbia for all or a part of the cost of providing such services. Such person may not be held liable for the cost of any services rendered more than 90 days prior to the date of issue of such notice. The Mayor shall determine the ability of the person who received services under this subchapter (or his estate) or his father, mother, spouse, or adult children, as the case may be, to reimburse the District of Columbia, by an examination conducted under oath. In any one case the Mayor may conduct as many examinations as he determines are necessary to ascertain the ability of such person (or his estate) or his relatives to so reimburse the District of Columbia. In the case of a person committed under § 24-527(a), the Mayor may conduct such examination at any time after a petition for such person's commitment is filed under such section; and in the case of a person committed under § 24-527(b), such examination may be conducted by the Mayor at any time after the court serves notice of the hearing to be conducted under subsection (b) of such section. In all other cases the Mayor may conduct an examination at any time.

(2) Any person described in clause (B) of paragraph (1) of this subsection who is liable to the District of Columbia under this section may apply to the Mayor to have such liability waived. The Mayor may waive such liability if he determines that it would be unreasonable to impose such liability because of the desertion or neglect of such person by the recipient of services under this subchapter or because of other factors similarly affecting the relationship between such person and such recipient. The Mayor shall prescribe procedures for the filing and hearing of such application under this paragraph.

(b) The Mayor may bring an action against a person made liable under subsection (a) of this section for all or any part of the cost of services provided under this subchapter to require such person to satisfy such liability. In such

an action the court may issue an order requiring any such person who is a party to such action to satisfy such liability in accordance with such terms as the court may prescribe. Such order may be enforced in the same manner as orders for alimony.

(c) Sums collected by the Mayor under this section shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(Aug. 4, 1947, ch. 472, § 14; Aug. 3, 1968, 82 Stat. 623, Pub. L. 90-452, § 3(a).)

Prior Codifications. — 1981 Ed., § 24-534. 1973 Ed., § 24-534.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-615. Donations.

The Mayor may accept on behalf of the District of Columbia donations of services or gifts of real or personal property, tangible or intangible, which are made for the purpose of carrying out his functions under this subchapter. Gifts of money and the proceeds from the liquidation of any other gift shall be deposited in the General Fund of the District of Columbia as established in the Revenue Funds Availability Act of 1975. The Mayor shall use such donations and gifts to carry out the purposes of this subchapter.

(Aug. 4, 1947, ch. 472, § 15; Aug. 3, 1968, 82 Stat. 624, Pub. L. 90-452, § 3(a); Jan. 22, 1976, D.C. Law 1-42, § 5(b), 22 DCR 6316.)

Prior Codifications. — 1981 Ed., § 24-535. 1973 Ed., § 24-535.

Legislative history of Law 1-42. — Law 1-42, the "Revenue Funds Availability Act of 1975," was introduced in Council and assigned Bill No. 1-161, which was referred to the Committee on the Budget. The Bill was adopted on first and second readings on July 29, 1975, and October 7, 1975, respectively. Signed by the Mayor on October 24, 1975, it was assigned Act No. 1-59 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter II. Omitted and Repealed Provisions.

§§ 24-631 to 24-643. [Omitted].

Omitted.

§ 24-644. Advisory committee. [Repealed].

Repealed.

(Aug. 3, 1968, 82 Stat. 624, Pub. L. 90-452, § 3(c).)

Prior Codifications. — 1981 Ed., § 24-514.

CHAPTER 7. REHABILITATION OF USERS OF NARCOTICS.

Sec.
 24-701. Purpose.
 24-702. Definitions.
 24-703. Order of examination.
 24-704. Right to counsel.
 24-705. Examinations by physicians.
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Sec.
 24-711. Patient not deemed a criminal.
 24-712. [Omitted].
 24-713. Care and treatment of drug users; authority of Surgeon General.
 24-714. Admittance into Public Health Service hospitals; narcotics users from District.
 24-715. Release of patients.

§ 24-701. Purpose.

The purpose of §§ 24-701 to 24-711 is to protect the health and safety of the people of the District of Columbia from the menace of drug addiction and to afford an opportunity to the drug user for rehabilitation. The Congress intends that federal criminal laws shall be enforced against drug users as well as other persons, and §§ 24-701 to 24-711 shall not be used to substitute treatment for punishment in cases of crime committed by drug users.

(June 24, 1953, 67 Stat. 77, ch. 149, § 2; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-702, 24-704, 24-707, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-601. 1973 Ed., § 24-601.

CASE NOTES

ANALYSIS

Construction and application.
 Federal inmates.
 Juveniles.
 Punishment.

Construction and application.

Federal Narcotic Addiction Rehabilitation Act standards for determining eligibility for addict exception at sentencing applies to addict exception of District of Columbia Controlled Substances Act. 18 U.S.C. § 4251 et seq.; D.C. Code 1981, § 24-601 et seq. *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Federal inmates.

Wardens of federal correctional facilities and prison medical staff owed no duty to federal inmate imprisoned in Florida on account of provisions of District of Columbia's civil commitment statutes for drug users not involved in criminal justice system, and inmate had no right of action against wardens or medical staff on account of those statutes. *Stamps v. Johns*,

597 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 5714 (2009), dismissed by 2009 U.S. App. LEXIS 10996 (D.C. Cir. Mar. 31, 2009).

Juveniles.

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. D.C. Code 1951, §§ 24-601 to 24-615, 24-603(a), 24-604, 24-606 to 24-608. In re *Whisaker*, 134 F.Supp. 864, 1955 U.S. Dist. LEXIS 2822 (D.D.C.1955).

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. D.C. Code 1951, §§ 11-901 et seq., 24-601 to 24-615. In re *Whisaker*, 134 F.Supp. 864, 1955 U.S. Dist. LEXIS 2822 (D.D.C.1955).

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. D.C. Code 1951, §§ 11-

901 et seq., 24-601 et seq., 24-612. In re Whisaker, 134 F.Supp. 864, 1955 U.S. Dist. LEXIS 2822 (D.D.C.1955).

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. D.C. Code 1951, §§ 11-901 et seq., 24-601 et seq., 24-612. In re Whisaker, 134 F.Supp. 864, 1955 U.S. Dist. LEXIS 2822 (D.D.C.1955).

Punishment.

District of Columbia's "Rehabilitation of Users of Narcotics" statute provision, stating that the statute shall not be used to substitute treatment for punishment in cases of crime committed by drug users, means that, when the Government is able successfully to prosecute

any drug user for a criminal offense under any federal statute, it may do so. (Per Wilkey, J., with two Judges concurring and two Judges concurring specially.) D.C. Code § 24-601. United States v. Moore, 486 F.2d 1139, 1973 U.S. App. LEXIS 9973 (C.A.D.C. 1973), writ of certiorari denied by 414 U.S. 980, 94 S. Ct. 298, 38 L. Ed. 2d 224, 1973 U.S. LEXIS 1167 (1973).

Congress' avowed intent to prosecute and convict drug users where indicated for all crime nullifies authority of District of Columbia Court of Appeals to formulate a new common-law rule of criminal responsibility which would insulate those same drug users from criminal punishment. D.C. Code § 24-602(a); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 102(1), 21 U.S.C. § 802(1). Franklin v. United States, 339 A.2d 398, 1975 D.C. App. LEXIS 373 (1975).

§ 24-702. Definitions.

For the purpose of §§ 24-701 to 24-711:

(1) The term "drug user" means any person, including a person under 18 years of age, notwithstanding the provisions of Chapter 23 of Title 16, who uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term "narcotic drugs" shall have the same meaning as that given to such term by § 4731 of the Internal Revenue Code of 1954.

(3) The term "patient" means any person ordered to appear before the Mayor, pursuant to the provisions of § 24-703.

(4) The term "Mayor" means the Mayor of the District of Columbia, sitting as a Board, or his designated agent or agents.

(June 24, 1953, 67 Stat. 77, ch. 149, § 3; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101; July 29, 1970, 84 Stat. 590, Pub. L. 91-358, title I, § 170.)

Section references. — This section is referred to in §§ 2-1602, 3-509, 11-921, 24-701, 24-704, 24-707, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-602. 1973 Ed., § 24-602.

References in text. — Section 4731 of the Internal Revenue Code of 1954, referred to in subdivision (2) of this section, was repealed by 84 Stat. 1292, Pub. L. 91-513, § 1101(b)(3)(A).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Drug users.

Wardens of federal correctional facilities and prison medical staff owed no duty to federal inmate imprisoned in Florida on account of provisions of District of Columbia's civil commitment statutes for drug users not involved in criminal justice system, and inmate had no right of action against wardens or medical staff on account of those statutes. *Stamps v. Johns*, 597 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 5714 (2009), dismissed by 2009 U.S. App. LEXIS 10996 (D.C. Cir. Mar. 31, 2009).

Decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction would not be rested on trial court record which did not disclose basis for expert witness' conclusion that defendant had an overwhelming compulsion psychologically to use heroin and there was no show-

ing whether finding of addiction related to criminal responsibility or only to habitual use. D.C. Code § 24-602(a); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 102(1), 21 U.S.C. § 802(1). *Franklin v. United States*, 339 A.2d 398, 1975 D.C. App. LEXIS 373 (1975).

Defendant, who had used heroin for about 15 years, who ordinarily took three or four shots a day, whose usual dose was three or four capsules, who did not steal to obtain money to buy narcotics, and who did not suffer any serious withdrawal symptoms when committed to hospital after his arrest, was "addict" within meaning of both National and Local Narcotic Rehabilitation Acts even though he had not gone so far in his drug habits as to lack free will. Narcotic Addict Rehabilitation Act of 1966, § 301(a), 42 U.S.C. § 3411(a); D.C. Code §§ 24-601, 24-602. *Wheeler v. United States*, 276 A.2d 722, 1971 D.C. App. LEXIS 310 (1971).

§ 24-703. Order of examination.

(a) Whenever the Mayor has probable cause to believe that any person within the District of Columbia, other than a person referred to in subsection (b) of this section, is a drug user, he forthwith shall order any law enforcement officer of the District of Columbia to bring that person before him, to conduct a preliminary examination, and if he finds sufficient evidence of addiction, as hereinbefore defined, he shall cause that person to be placed in an institution to be designated by him for an examination by physicians pursuant to § 24-705.

(b) The Mayor shall not order any person brought before him if the said person is charged with a criminal offense, whether by indictment, information, or otherwise, or if the said person is under sentence for a criminal offense, whether he is serving the sentence, or is on probation or parole, or has been released on bond pending appeal.

(June 24, 1953, 67 Stat. 77, ch. 149, § 4; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-702, 24-704, 24-705, 24-707, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-603. 1973 Ed., § 24-603.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Federal inmates.
Juveniles.

Federal inmates.

Wardens of federal correctional facilities and prison medical staff owed no duty to federal inmate imprisoned in Florida on account of provisions of District of Columbia's civil commitment statutes for drug users not involved in criminal justice system, and inmate had no right of action against wardens or medical staff on account of those statutes. *Stamps v. Johns*, 597 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 5714 (2009), dismissed by 2009 U.S. App. LEXIS 10996 (D.C. Cir. Mar. 31, 2009).

Juveniles.

The intention of Congress was to include

juveniles within the operation of the Drug Users' Act. D.C. Code 1951, §§ 24-601 to 24-615, 24-603(a), 24-604, 24-606 to 24-608. In re *Whisaker*, 134 F.Supp. 864, 1955 U.S. Dist. LEXIS 2822 (D.D.C.1955).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. D.C. Code 1951, §§ 11-901 et seq., 24-601 to 24-615. In re *Whisaker*, 134 F.Supp. 864, 1955 U.S. Dist. LEXIS 2822 (D.D.C.1955).

§ 24-704. Right to counsel.

(a) A patient shall have the right to the assistance of counsel at every stage of the judicial proceeding under §§ 24-701 to 24-711, and the court shall assign counsel to represent him if the patient is unable to obtain counsel.

(b) The counsel for a patient may inspect the reports of the examination made pursuant to the authority contained in § 24-705. No such report and no evidence resulting from such personal examination or evidence offered by the patient shall be admissible against him in any judicial proceeding except a proceeding under §§ 24-701 to 24-711.

(c) The patient may, prior to the examination made pursuant to the provisions of § 24-705 or prior to the hearing provided for by § 24-707, waive his rights to an examination, to counsel, or to such hearing, and voluntarily submit himself to commitment pursuant to the provisions of §§ 24-701 to 24-711.

(June 24, 1953, 67 Stat. 78, ch. 149, § 7; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-702, 24-707, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-604. 1973 Ed., § 24-604.

CASE NOTES

Federal inmates.

Wardens of federal correctional facilities and prison medical staff owed no duty to federal inmate imprisoned in Florida on account of provisions of District of Columbia's civil commitment statutes for drug users not involved in

criminal justice system, and inmate had no right of action against wardens or medical staff on account of those statutes. *Stamps v. Johns*, 597 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 5714 (2009), dismissed by 2009 U.S. App. LEXIS 10996 (D.C. Cir. Mar. 31, 2009).

§ 24-705. Examinations by physicians.

(a) Whenever the Mayor orders a patient into an institution pursuant to the provisions of § 24-703, he shall immediately appoint 2 qualified physicians, 1 of whom shall be a psychiatrist, to examine the said patient, and within 5 days after such appointment, each physician shall file with the United States Attorney for the District of Columbia, a written report of such examination, which shall include a statement of his conclusion as to whether the patient is a drug user.

(b) The United States Attorney for the District of Columbia shall review the facts and circumstances of each case submitted to him and present by petition those in which he feels justification exists in the public interest to the Superior Court of the District of Columbia for determination and disposition, or dismiss the patient from custody. A copy of such petition shall be served on the patient in open court, at which time the court shall set a hearing date and advise the patient of his right to counsel and his right to demand within 5 days a trial by jury.

(June 24, 1953, 67 Stat. 78, ch. 149, § 5; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(31).)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-704, 24-706, 24-707, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-605. 1973 Ed., § 24-605.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-706. When hearing is required.

If, in a report filed pursuant to § 24-705, either of the examining physicians states that the patient is a drug user, or that he is unable to reach any conclusion by reason of the refusal of the patient to submit to thorough examination, the Court shall conduct a hearing upon petition of the United States Attorney in the manner provided in § 24-707.

(June 24, 1953, 67 Stat. 78, ch. 149, § 6; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-702, 24-704, 24-707, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-606. 1973 Ed., § 24-606.

§ 24-707. Hearing.

(a) Upon the evidence introduced at a hearing held for that purpose the

court shall determine whether the patient is a drug user. The hearing shall be conducted without a jury unless, before such hearing and within 5 days after the date on which the petition is filed pursuant to § 24-705, a jury is demanded by the patient or by the United States Attorney for the District of Columbia. Each patient concerning whom a report is filed shall be detained at such place as the Mayor may designate until the completion of such hearing or until released as provided in § 24-705(b).

(b) The rules of evidence applicable in civil judicial proceedings shall be applicable to hearings pursuant to this section, including the right of the patient to present evidence in his own behalf and to subpoena and cross-examine witnesses. However, no patient examined pursuant to the provisions of §§ 24-701 to 24-711, shall be permitted at any hearing order pursuant to this section to object to the submission of testimony concerning such examination on the ground of privilege.

(June 24, 1953, 67 Stat. 78, ch. 149, § 8; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-702, 24-704, 24-706, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-607. 1973 Ed., § 24-607.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-708. Confinement of patient.

If the court finds the patient to be a drug user, it may commit him to a hospital designated by the patient or the Mayor and approved by the court, to be confined there for rehabilitation until released in accordance with § 24-709. In the event a patient elects to designate a hospital to which he wishes to be committed, he shall be required to satisfy the court that such hospital has medical, rehabilitation, and security facilities comparable to the institutions designated by the Mayor and, in addition, the cost of such hospitalization shall be borne by the patient. The head of the hospital shall submit written reports within such periods as the court may direct, but no longer than 6 months after the commitment and for successive intervals of time thereafter, and state reasons why the patient has not been released.

(June 24, 1953, 67 Stat. 79, ch. 149, § 9; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-702, 24-704, 24-707, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-608. 1973 Ed., § 24-608.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-709. Release of patient.

(a) When the head of the hospital to which the patient is committed finds that the patient appears to be no longer in need of confinement for treatment purposes, or has received maximum benefits, he shall give notice to the judge of the committing court, and said patient shall be delivered to the said court for such further action as the court may deem necessary and proper under the provisions of §§ 24-701 to 24-711.

(b) The court, upon petition of the patient after confinement for 1 year, shall inquire into the refusal or failure of the head of the hospital to release him. If the court finds that the patient is no longer in need of care, treatment, guidance, or rehabilitation, or has received maximum benefits, it shall order the patient released, in accordance with the provisions of § 24-710.

(June 24, 1953, 67 Stat. 79, ch. 149, § 10; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-702, 24-704, 24-707, 24-708, 24-710, 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-609. 1973 Ed., § 24-609.

§ 24-710. Periodic examination of released patients.

(a) For 2 years after his release, the patient shall report to the Mayor at such times and places as required, for a physical examination to determine whether the patient has again become a drug user. If the Mayor determines that the person examined is a drug user, he shall then order the patient into an institution in accordance with the provisions of §§ 24-701 to 24-711.

(b) Upon the failure of any patient to report in accordance with the provisions of subsection (a) of this section, the United States Attorney for the District of Columbia shall be notified of such failure, and a statement of such failure to report shall be filed with the court. The court shall issue an attachment for the patient and order him confined forthwith for examination and such further action as the court may deem necessary and proper under the provisions of §§ 24-701 to 24-711.

(June 24, 1953, 67 Stat. 79, ch. 149, § 11; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-702, 24-704, 24-707, 24-709 to 24-711, and 24-714.

Prior Codifications. — 1981 Ed., § 24-610. 1973 Ed., § 24-610.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-711. Patient not deemed a criminal.

The patient in any proceedings under §§ 24-701 to 24-711 shall not be deemed a criminal and the commitment of any such patient shall not be deemed a conviction.

(June 24, 1953, 67 Stat. 79, ch. 149, § 12; July 24, 1956, 70 Stat. 612, ch. 676, title I, § 101.)

Section references. — This section is referred to in §§ 2-1602, 11-921, 24-701, 24-702, 24-704, 24-707, 24-709, 24-710, and 24-714.

Prior Codifications. — 1981 Ed., § 24-611. 1973 Ed., § 24-611.

§ 24-712. [Omitted].

Omitted.

§ 24-713. Care and treatment of drug users; authority of Surgeon General.

(a) The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-forming narcotic drugs who are civilly committed to treatment under the Narcotic Addict Rehabilitation Act of 1966, addicts who voluntarily submit themselves for treatment, and addicts and other persons with drug abuse and drug dependence problems convicted of offenses against the United States and who are not sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966, including persons convicted by general courts-martial and consular courts. Such care and treatment shall be provided at hospitals of the Public Health Service especially equipped for the accommodation of such patients or elsewhere where authorized under other provisions of law, and shall be designed to rehabilitate such persons, to restore them to health, and, where necessary, to train them to be self-supporting and self-reliant; but nothing in this section or in §§ 257 [repealed] to 261a [repealed] of Title 42, United States Code, shall be construed to limit the authority of the Surgeon General under other provisions of law to provide for the conditional release of patients and for aftercare under supervision. In carrying out this subsection, the Secretary shall establish in each hospital and other appropriate medical

facility of the Service a treatment and rehabilitation program for drug addicts and other persons with drug abuse and drug dependence problems who are in the area served by such hospital or other facility; except that the requirement of this sentence shall not apply in the case of any such hospital or other facility with respect to which the Secretary determines that there is not sufficient need for such a program in such hospital or other facility.

(b) Upon the admittance to, and departure from, a hospital of the Service of a person who voluntarily submitted himself for treatment pursuant to the provisions of this section, and who at the time of his admittance to such hospital was a resident of the District of Columbia, the Surgeon General shall furnish to the Mayor of the District of Columbia or his designated agent, the name, address, and such other pertinent information as may be useful in the rehabilitation to society of such person.

(c) The Secretary may enter into agreements with the Administrator of Veterans' Affairs, the Secretary of Defense, and the head of any other department or agency of the government under which agreements hospitals and other appropriate medical facilities of the Service may be used in treatment and rehabilitation programs provided by such department or agency for drug addicts and other persons with drug abuse and other drug dependence problems who are in areas served by such hospitals or other facilities.

(July 1, 1944, 58 Stat. 698, ch. 373, title III, § 341; May 8, 1954, 68 Stat. 80, ch. 195, § 3; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 302(a); Nov. 8, 1966, 80 Stat. 1449, Pub. L. 89-793, title VI, § 601; Oct. 27, 1970, 84 Stat. 1240, Pub. L. 91-513, title I, § 2(a)(1); Mar. 21, 1972, 86 Stat. 77, Pub. L. 92-255, § 402; Oct. 12, 1984, 98 Stat. 2031, Pub. L. 98-473, § 232(a).)

Section references. — This section is referred to in § 24-715.

Prior Codifications. — 1981 Ed., § 24-613.
1973 Ed., § 24-613.

References in text. — The Narcotic Addict Rehabilitation Act of 1966, referred to in subsection (a) of this section, is codified in 18 U.S.C. §§ 4251 to 4255, 28 U.S.C. §§ 2901 to 2906, and 42 U.S.C. §§ 3411 to 3426, 3441.

18 U.S.C. §§ 4251 to 4255 were repealed by Pub. L. 98-473, title II, § 218(a)(6), 98 Stat. 2027 effective November 1, 1987 except that the sections remain applicable for five years to individuals who committed offense or acts prior to November 1, 1987.

Transfer of Functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to the Secretary of Health, Education, and Welfare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were trans-

ferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-714. Admittance into Public Health Service hospitals; narcotics users from District.

(a) The Surgeon General is authorized to admit for care and treatment in any hospital of the Public Health Service suitably equipped therefor, and thereafter to transfer between hospitals of the Service in accordance with § 248b of Title 42, United States Code, any addict who is committed, under the provisions of §§ 24-701 to 24-711, to the Service or to a hospital thereof for care and treatment and who the Surgeon General determines is a proper subject for such care and treatment. No such addict shall be admitted unless:

(1) He is committed prior to July 1, 1958; and

(2) At the time of his commitment, the number of persons in hospitals of the Service who have been admitted pursuant to this subsection is less than 100; and

(3) Suitable accommodations are available after all eligible addicts convicted of offenses against the United States have been admitted.

(b) Any person admitted to a hospital of the Service pursuant to subsection (a) of this section shall be discharged therefrom: (1) upon order of the Superior Court of the District of Columbia; or (2) when he is found by the Surgeon General to be cured and rehabilitated. When any such person is so discharged, the Surgeon General shall give notice thereof to the Superior Court of the District of Columbia and shall deliver such person to such court for such further action as such court may deem necessary and proper under the provisions of §§ 24-701 to 24-711.

(c) With respect to the detention, transfer, parole, or discharge of any person committed to a hospital of the Service in accordance with subsection (a) of this section, the Surgeon General and the officer in charge of the hospital, in addition to authority otherwise vested in them, shall have such authority as may be conferred upon them, respectively, by the order of the committing court.

(d) The cost of providing care and treatment for persons admitted to a hospital of the Service pursuant to subsection (a) of this section shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to the Public Health Service, either in advance or otherwise, as may be determined by the Surgeon General. Such cost may be determined for each addict or on the basis of rates established for all or particular classes of patients, and shall include the cost of transportation to and from facilities or the Public Health Service. Moneys so paid to the Public Health Service shall be covered into the Treasury of the United States as miscellaneous receipts. Appropriations available for the care and treatment of addicts admitted to a hospital of the Service under this section shall be available, subject to regulations, for paying the cost of transportation to the District of Columbia, including subsistence allowance while traveling, for any such addict who is discharged.

(July 1, 1944, ch. 373, title III, § 345; May 8, 1954, 68 Stat. 80, ch. 195, § 2; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 302(c); July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(32).)

Section references. — This section is referred to in § 24-715.

Prior Codifications. — 1981 Ed., § 24-614. 1973 Ed., § 24-614.

Transfer of Functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in

the Public Health Service were transferred to the Secretary of Health, Education, and Welfare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

§ 24-715. Release of patients.

For purposes of §§ 24-713 to 24-715, an individual shall be deemed cured of his addiction, drug abuse, or drug dependence and rehabilitated if the Surgeon General determines that he has received the maximum benefits of treatment and care by the Service for his addiction, drug abuse, or drug dependence or if the Surgeon General determines that his further treatment and care for such purpose would be detrimental to the interests of the Service.

(July 1, 1944, ch. 373, title III, § 347; May 8, 1954, 68 Stat. 81, ch. 195, § 4; Oct. 27, 1970, 84 Stat. 1240, Pub. L. 91-513, title I, § 2(a)(4).)

Prior Codifications. — 1981 Ed., § 24-615. 1973 Ed., § 24-615.

CASE NOTES

Juveniles.

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. D.C. Code 1951, §§ 11-901 et seq., 24-601 to 24-615. In re Whisaker, 134 F.Supp. 864, 1955 U.S. Dist. LEXIS 2822 (D.D.C.1955).

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. D.C. Code 1951, §§ 11-901 et seq., 24-601 to 24-615. In re Whisaker, 134 F.Supp. 864, 1955 U.S. Dist. LEXIS 2822 (D.D.C.1955).

CHAPTER 7A. TREATMENT INSTEAD OF JAIL FOR CERTAIN NON-VIOLENT
OFFENDERS.

Sec.

24-751.01 to 24-751.13 [Omitted].

§§ 24-751.01 to 24-751.13 [Omitted].

Omitted.

Transfer of Functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to the Secretary of Health, Education, and Welfare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

Editor's notes. — Validity of D.C. Law 14-308: This chapter, consisting of §§ 24-751.01 to 24-751.13, held invalid. The District of Columbia Court of Appeals held that the Treatment Instead of Jail Initiative (Law 14-308) appropriated funds in violation of D.C. Official Code 1-204.101(a) and was impermissibly adopted through the initiative process. *District of Columbia Bd. of Elections and Ethics v. District of Columbia*, 866 A.2d 788 (D.C. 2005).

CHAPTER 8. INTERSTATE AGREEMENT ON DETAINERS.

Sec.

24-801. Enactment.

24-802. Definitions.

24-803. Enforcement and cooperation required
of parties.

Sec.

24-804. Regulations.

24-805. Reservation of authority.

§ 24-801. Enactment.

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the form set forth in this section.

The contracting States solemnly agree that:

ARTICLE I

The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending State" shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving State" shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any

untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided, that, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (b) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the

purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated; provided, that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further, that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as

an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any

government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.

(Dec. 9, 1970, 84 Stat. 1397, Pub. L. 91-538, § 2.)

Prior Codifications. — 1981 Ed., § 24-701. 1973 Ed., § 24-701.

CASE NOTES

ANALYSIS

Construction and application.
 Detainers.
 Dismissal of charges.
 Effective assistance of counsel.
 Guilty pleas.
 Habeas corpus.
 Review.
 Sentences.
 Violations.
 Waiver.

Construction and application.

The Interstate Agreement on Detainers (IAD) is a compact among states and federal government establishing procedures by which one jurisdiction may obtain temporary custody of prisoner incarcerated in another jurisdiction for trial on outstanding charges. Interstate Agreement on Detainers Act, §§ 1-8, 18 U.S.C.App.; D.C. Code 1981, § 24-701. *Murray v. District of Columbia*, 826 F. Supp. 4, 1993 U.S. Dist. LEXIS 9309 (1993).

Principle purpose of the Interstate Agreement on Detainers (IAD) is to ensure that sentenced prisoner, who has entered into the life of the institution to which he has been committed for term of imprisonment, does not have progress of treatment and rehabilitation obstructed by numerous absences in connection with several pending charges in another jurisdiction. Interstate Agreement on Detainers Act, §§ 1-8, 18 U.S.C.App.; D.C. Code 1981, § 24-701. *Murray v. District of Columbia*, 826 F. Supp. 4, 1993 U.S. Dist. LEXIS 9309 (1993).

The 180-day period under the Interstate Agreement on Detainers does not commence until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him. *Cooper v. United States*, 28 A.3d 1132, 2011 D.C. App. LEXIS 557 (2011).

Charges unrelated to those in the indictment, information, or complaint underlying the detainer are not subject to the Interstate Agreement on Detainers' (IAD) speedy trial provisions. *Grant v. United States*, 856 A.2d 1131,

2004 D.C. App. LEXIS 431 (2004), writ of certiorari denied by 543 U.S. 1128, 125 S. Ct. 1096, 160 L. Ed. 2d 1082, 2005 U.S. LEXIS 910, 73 U.S.L.W. 3448 (2005).

Interstate Agreement on Detainers (IAD) applied only with respect to prosecution on indictment for cocaine offenses that formed the basis for which detainer had been lodged, and not to separate indictment for drug offenses for which defendant was produced solely pursuant to writ of habeas corpus ad prosequendum. *Grant v. United States*, 856 A.2d 1131, 2004 D.C. App. LEXIS 431 (2004), writ of certiorari denied by 543 U.S. 1128, 125 S. Ct. 1096, 160 L. Ed. 2d 1082, 2005 U.S. LEXIS 910, 73 U.S.L.W. 3448 (2005).

Because the Interstate Agreement on Detainers (IAD) is a congressionally-approved interstate compact, it is a federal law subject to federal construction, and thus, the United States Supreme Court's interpretations of the IAD are binding upon state courts. *Grant v. United States*, 856 A.2d 1131, 2004 D.C. App. LEXIS 431 (2004), writ of certiorari denied by 543 U.S. 1128, 125 S. Ct. 1096, 160 L. Ed. 2d 1082, 2005 U.S. LEXIS 910, 73 U.S.L.W. 3448 (2005).

The provisions of the Interstate Agreement on Detainers (IAD) become applicable when a detainer is lodged against a prisoner in one State based on outstanding criminal charges in another State. *Swanigan v. United States*, 853 A.2d 742, 2004 D.C. App. LEXIS 386 (2004).

Interstate Agreement on Detainers (IAD) did not require that defendant, who was serving a prison sentence in Virginia, be brought to trial within 180 days of his request that he be returned to the District of Columbia pursuant to the IAD to face the charges pending against him there, where defendant finished serving his Virginia prison sentence before the 180-day period expired. *Swanigan v. United States*, 853 A.2d 742, 2004 D.C. App. LEXIS 386 (2004).

Even if defendant wrote New York official requesting that his District of Columbia detainer be resolved, that conduct was not sufficient to trigger the 180-day requirement of Interstate Agreement on Detainers (IAD). D.C.

Code 1981, § 24-701. *Fields v. United States*, 698 A.2d 485, 1997 D.C. App. LEXIS 194 (1997), writ of certiorari denied by 523 U.S. 1012, 118 S. Ct. 1203, 140 L. Ed. 2d 331, 1998 U.S. LEXIS 1768, 66 U.S.L.W. 3592 (1998).

Primary purpose of interstate agreement on detainees is to eliminate abuses, such as delay in bringing prisoners to trial and interference with rehabilitation programs, which characterized use of detainees prior to adoption of agreement and it is also designed to establish uniform process for transporting prisoners for trial from jurisdiction in which they are serving sentence to jurisdiction in which they have been charged with offense. D.C. Code § 24-701 et seq. *Kleinbart v. United States*, 426 A.2d 343, 1981 D.C. App. LEXIS 220 (1981), recalled by 553 A.2d 1236, 1989 D.C. App. LEXIS 22 (D.C. 1989).

Interstate Agreement on Detainers Act is designed to establish uniform process for transporting prisoners for trial from jurisdiction in which they are serving sentence to jurisdiction in which they have been charged with offense; primary purpose of Act is to eliminate abuses, such as delay in bringing prisoners to trial and interference with rehabilitation programs, which characterized use of "detainers" previous to adoption of Act. Interstate Agreement on Detainers Act, § 2, art. I et seq., D.C. Code § 24-701 note; D.C. Code §§ 24-701 to 24-705. *Vance v. United States*, 399 A.2d 52, 1979 D.C. App. LEXIS 306 (1979).

Interstate Agreement on Detainers Act did not apply where defendant was transferred pursuant to writ of habeas corpus ad prosequendum and no detainer was ever filed. Interstate Agreement on Detainers Act, § 2, art. I et seq., D.C. Code § 24-701 note; D.C. Code §§ 24-701 to 24-705. *Vance v. United States*, 399 A.2d 52, 1979 D.C. App. LEXIS 306 (1979).

Rights conferred under the Interstate Agreement on Detainers Act are a matter of legislative grace; they can be rescinded as readily as they were granted. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Assumption inherent in interstate agreement on detainees is that appropriate official of "custodial" or "sending" jurisdiction will provide prisoner with information necessary for him to assert his right to trial within 180 days in the "prosecuting" or "receiving" jurisdiction. D.C. Code § 24-701 et seq.; Interstate Agreement on Detainers Act, § 2, arts. III(a-c), IV(c), D.C. Code § 24-701 note. *McBride v. United States*, 393 A.2d 123, 1978 D.C. App. LEXIS 341 (1978), writ of certiorari denied by 440 U.S.

927, 99 S. Ct. 1260, 59 L. Ed. 2d 482, 1979 U.S. LEXIS 938 (1979).

Actual inability of receiving jurisdiction to obtain defendant's physical presence renders him unable to stand trial there, equally when due to the custodial jurisdiction's refusal as when due to that jurisdiction's having first delivered the defendant to some third jurisdiction. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Neither the terms nor the purposes of the Interstate Agreement on Detainers Act would be served by treating defendant as able to stand trial in the District of Columbia while he was in Maryland's custody, nor would those terms or purposes be served by imposing upon the government an obligation to seek defendant's earlier return to the District under circumstances in which the government had no reason to suspect any such obligation, so that while defendant was unable to stand trial within the meaning of Article VI(a) during the entire time he was in Maryland's custody, the 120-day period of Article IV(c) was tolled. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Detainers.

A "detainer" is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency after his release or to notify the agency when release of the prisoner is imminent. *Grant v. United States*, 856 A.2d 1131, 2004 D.C. App. LEXIS 431 (2004), writ of certiorari denied by 543 U.S. 1128, 125 S. Ct. 1096, 160 L. Ed. 2d 1082, 2005 U.S. LEXIS 910, 73 U.S.L.W. 3448 (2005).

For purposes of the Interstate Agreement on Detainers (IAD), the lodging of a detainer does not, in itself, require the immediate transfer of the prisoner from one state to another; rather, it merely requires a state in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried by a different state for a different crime. *Swanigan v. United States*, 853 A.2d 742, 2004 D.C. App. LEXIS 386 (2004).

A "detainer," for purposes of the Interstate Agreement on Detainers (IAD), is simply a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction. *Swanigan v. United States*, 853 A.2d 742, 2004 D.C. App. LEXIS 386 (2004).

Arrest warrant will serve as detainer, within purview of Interstate Agreement on Detainers (IAD), if it is based on untried information, indictment or complaint, it is filed by criminal justice agency, it is filed directly with facilities where prisoner is incarcerated, it notifies prison officials that prisoner is wanted to face

pending charges, and it asks prison either to hold prisoner at conclusion of his sentence, or to notify agency officials when prisoner's release is imminent. D.C. Code 1981, § 24-701 et seq. *Tucker v. United States*, 569 A.2d 162, 1990 D.C. App. LEXIS 12 (1990).

Where it is unclear whether arrest warrant was lodged as "detainer," within meaning of Interstate Agreement on Detainers, court employs "functional analysis," under which it determines whether officials intended warrant to serve as detainer and whether defendant suffered any prejudice during his incarceration on account of warrant. D.C. Code 1981, § 24-701 et seq. *Tucker v. United States*, 569 A.2d 162, 1990 D.C. App. LEXIS 12 (1990).

Writ of habeas corpus ad prosequendum is not a "detainer" within the interstate agreement on detainers. D.C. Code § 24-701 et seq. *Kleinbart v. United States*, 426 A.2d 343, 1981 D.C. App. LEXIS 220 (1981), recalled by 553 A.2d 1236, 1989 D.C. App. LEXIS 22 (D.C. 1989).

A writ of habeas corpus ad prosequendum is not a "detainer" for purposes of Interstate Agreement on Detainers Act. Interstate Agreement on Detainers Act, § 2, art. I et seq., D.C. Code § 24-701 note; D.C. Code §§ 24-701 to 24-705. *Vance v. United States*, 399 A.2d 52, 1979 D.C. App. LEXIS 306 (1979).

A writ of habeas corpus ad prosequendum is not a "detainer" for purposes of Interstate Agreement on Detainers Act. Interstate Agreement on Detainers Act, § 2, art. I et seq., D.C. Code § 24-701 note; D.C. Code §§ 24-701 to 24-705. *Vance v. United States*, 399 A.2d 52, 1979 D.C. App. LEXIS 306 (1979).

Writ of habeas corpus ad prosequendum issued by federal court was not detainer within meaning of Interstate Agreement on Detainers Act, and thus Government was not required to comply with Act in securing presence of defendant through writ of habeas corpus ad prosequendum. Interstate Agreement on Detainers Act, § 2, art. I et seq., D.C. Code § 24-701 note; Interstate Agreement on Detainers Act, § 1 et seq., 18 U.S.C. *Sheffield v. United States*, 397 A.2d 963, 1979 D.C. App. LEXIS 275 (1979), writ of certiorari denied by 441 U.S. 965, 99 S. Ct. 2414, 60 L. Ed. 2d 1071, 1979 U.S. LEXIS 2013 (1979).

Detainer is not a demand for immediate surrender of the prisoner, but only a request from the official lodging the detainer that he be notified before the inmate is released from custody. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Dismissal of charges.

Dismissal sanction for violation of time limi-

tations under Interstate Agreement on Detainers is prophylactic measure designed to induce compliance in other cases. Interstate Agreement on Detainers Act, § 2, arts. III, III(a-c), IV(c), IX, D.C. Code § 24-701 note. *McBride v. United States*, 393 A.2d 123, 1978 D.C. App. LEXIS 341 (1978), writ of certiorari denied by 440 U.S. 927, 99 S. Ct. 1260, 59 L. Ed. 2d 482, 1979 U.S. LEXIS 938 (1979).

A prisoner's return to the sending jurisdiction after a brief stay for pretrial proceedings in the receiving jurisdiction did not warrant dismissal of an indictment under Article IV(e) where no interference with the prisoner's rehabilitation program in the sending state had been shown. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Effective assistance of counsel.

Failure to move for relief under the Interstate Agreement on Detainers Act cannot have constituted ineffective assistance of counsel if such a motion would have been unsuccessful. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Trial counsel's failure to move for dismissal based upon defendant's Interstate Agreement on Detainers Act rights did not fall below the standard of reasonableness under prevailing professional norms. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Guilty pleas.

By voluntarily pleading guilty, defendant waived any claim he might have had under Interstate Agreement on Detainers (IAD). D.C. Code 1981, § 24-701. *Moore v. United States*, 724 A.2d 1198, 1999 D.C. App. LEXIS 19 (1999).

Habeas corpus.

Pretrial detainee was not entitled to federal habeas relief, despite detainee's allegations of prosecutorial misconduct and violations of Interstate Agreement on Detainers, Fifth Amendment presentment and due process clauses, Sixth Amendment right to speedy trial, and Fourteenth Amendment due process clause, where record bore no suggestion that he had presented any of his claims to state court, any delays were result of detainee's conduct, and claims could all be properly resolved by state court. *Williams v. Warden-Central Det. Facility*, 538 F.Supp.2d 74, 2008 U.S. Dist. LEXIS 18099 (2008).

Federal habeas petition alleging improper transfer from Maryland to District of Columbia in violation of Interstate Agreement on Detainers could not be entertained by district court where petitioner was still in process of collaterally challenging his District of Columbia convictions, and there was no showing that District of Columbia remedy was inadequate or ineffective. D.C. Code 1981, §§ 23-110, 24-701; Md.Code 1957, Art. 41, § 2-201 et seq. *Miles v.*

Rollins, 733 F. Supp. 128, 1990 U.S. Dist. LEXIS 3553 (1990).

In order to obtain custody of a prisoner incarcerated in another state, the government does not proceed by way of the Interstate Agreement on Detainers (IAD) when it demonstrably obtains custody over an inmate defendant solely through a writ of habeas corpus ad prosequendum, despite the existence of lodged detainers in other, unrelated cases. *Grant v. United States*, 856 A.2d 1131, 2004 D.C. App. LEXIS 431 (2004), writ of certiorari denied by 543 U.S. 1128, 125 S. Ct. 1096, 160 L. Ed. 2d 1082, 2005 U.S. LEXIS 910, 73 U.S.L.W. 3448 (2005).

The government seeking to secure custody of a defendant incarcerated in another state need not proceed by way of the Interstate Agreement on Detainers (IAD); it may obtain a state prisoner by means of a writ of habeas corpus ad prosequendum without ever filing a detainer, and in such a case, the IAD is inapplicable. *Grant v. United States*, 856 A.2d 1131, 2004 D.C. App. LEXIS 431 (2004), writ of certiorari denied by 543 U.S. 1128, 125 S. Ct. 1096, 160 L. Ed. 2d 1082, 2005 U.S. LEXIS 910, 73 U.S.L.W. 3448 (2005).

A "writ of habeas corpus ad prosequendum" is a writ commanding the immediate removal of a prisoner from incarceration so that he or she may be transferred into the jurisdiction from which the writ issued to stand trial on charges for crimes committed within that jurisdiction. *Grant v. United States*, 856 A.2d 1131, 2004 D.C. App. LEXIS 431 (2004), writ of certiorari denied by 543 U.S. 1128, 125 S. Ct. 1096, 160 L. Ed. 2d 1082, 2005 U.S. LEXIS 910, 73 U.S.L.W. 3448 (2005).

An ineffectiveness claim grounded on failure to assert Interstate Agreement on Detainers Act rights is subject to review on a writ of habeas corpus or motion pursuant to § 23-110. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Review.

Issue whether Interstate Agreement on Detainers applied to prosecution for possession with intent to distribute cocaine was matter of law subject to de novo review, and thus, United States's attorney's failure to raise issue before trial court did not necessarily preclude review of claim on direct appeal. *Grant v. United States*, 856 A.2d 1131, 2004 D.C. App. LEXIS 431 (2004), writ of certiorari denied by 543 U.S. 1128, 125 S. Ct. 1096, 160 L. Ed. 2d 1082, 2005 U.S. LEXIS 910, 73 U.S.L.W. 3448 (2005).

Denial of defendant's motion to dismiss charges under the Interstate Agreement on Detainers (IAD) is a question of federal law reviewed de novo. *Swanigan v. United States*, 853 A.2d 742, 2004 D.C. App. LEXIS 386 (2004).

Defendant's motion to dismiss a drug possession charge for failure to comply with the Interstate Agreement on Detainers (IAD) was not appealable pursuant to collateral order exception to final judgment rule; since the IAD did not create a right to avoid trial, but rather, a right to have the charging jurisdiction take custody of the defendant and try him within 180 days, the denial of the defendant's motion did not result in the irretrievable loss of an important right. D.C. Code 1981, § 24-701. *Meyers v. United States*, 730 A.2d 155, 1999 D.C. App. LEXIS 112 (1999).

Defendant's Interstate Agreement on Detainer Act claims were not preserved for appeal in context of trial court's denial of his pretrial motion to suppress lineup identification; defendant's vague references to the Act in his memorandum supporting motion to suppress were insufficient to place trial court on notice that he was invoking his right to dismissal of the indictment. D.C. Code 1981, §§ 24-701 to 24-705; Criminal Rule 12(d). *Jenkins v. United States*, 483 A.2d 660, 1984 D.C. App. LEXIS 513 (1984), writ of certiorari denied by 469 U.S. 1224, 105 S. Ct. 1215, 84 L. Ed. 2d 356, 1985 U.S. LEXIS 1061, 53 U.S.L.W. 3598 (1985).

Sentences.

Where defendant was convicted in the United States District Court for the District of Columbia for possession of narcotics and thereafter was convicted in the Superior Court for the District of Columbia of armed robbery, and the armed robbery sentence was imposed to run consecutively to the narcotics sentence, she need not be granted a parole hearing until she has served one-third of the aggregate of the maximum of the two sentences, since the two sentences were imposed by the same sovereign, and the District of Columbia did not acquire the attributes of a separate sovereignty by virtue of its being party to the Interstate Agreement on Detainers. 18 U.S.C. § 4205(a, h); D.C. Code § 24-701; Interstate Agreement on Detainers Act, § 1 et seq., 18 U.S.C. *Goode v. Markley*, 603 F.2d 973, 1979 U.S. App. LEXIS 13434 (C.A.D.C. 1979), writ of certiorari denied by 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768, 1980 U.S. LEXIS 798 (1980).

Interstate Agreement on Detainers (IAD) did not apply to defendant at time of his transfers between Maryland and District of Columbia, where defendant was not sentenced in Maryland until after sentencing in District of Columbia case. D.C. Code 1981, § 24-701. *Moore v. United States*, 724 A.2d 1198, 1999 D.C. App. LEXIS 19 (1999).

Fact that defendant may have received credit for the time he was incarcerated did not convert that period of incarceration into a "sentence" within the meaning of the Interstate Agreement on Detainers Act. Interstate Agreement

on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note; Pa.R.Crim.P., Rules 1406, 1406(b). *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Violations.

A violation of the Interstate Agreement on Detainers Act is not recognizable as a claim of lack of subject matter jurisdiction or failure to state an offense. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note; D.C. Code SCR, Criminal Rule 12(b)(2). *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

A violation of the Interstate Agreement on Detainers Act is a defense which is capable of determination without trial of the general issue; thus, it comes within that class of rights which must be asserted before trial or, at least, during the trial itself. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note; D.C. Code SCR, Criminal Rule 12(b). *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

A claim that the Interstate Agreement on Detainers Act has been violated should be raised at the earliest possible time before the witnesses and parties have gone to the burden and expense of a trial. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Waiver.

Defendant waived any right to dismissal of indictment by failing to raise issue of whether his transfer from Maryland to the District of Columbia violated basic rights provided him by the Interstate Agreement on Detainers Act by motion in trial court, even assuming that provisions of the Act were violated. D.C. Code 1981, §§ 24-701 to 24-705; Criminal Rule 12(d). *Jenkins v. United States*, 483 A.2d 660, 1984 D.C. App. LEXIS 513 (1984), writ of certiorari denied by 469 U.S. 1224, 105 S. Ct. 1215, 84 L. Ed. 2d 356, 1985 U.S. LEXIS 1061, 53 U.S.L.W. 3598 (1985).

Absent good cause shown, failure to present claim under the Interstate Agreement on Detainers Act at the trial level constitutes a waiver of those rights under Superior Court

Criminal Rule. D.C. Code 1981, §§ 24-701 to 24-705; Criminal Rule 12. *Jenkins v. United States*, 483 A.2d 660, 1984 D.C. App. LEXIS 513 (1984), writ of certiorari denied by 469 U.S. 1224, 105 S. Ct. 1215, 84 L. Ed. 2d 356, 1985 U.S. LEXIS 1061, 53 U.S.L.W. 3598 (1985).

Waiver of rights under Interstate Agreement on Detainers Act need not be a waiver in fact, i.e., there need not be an intentional relinquishment of a known right for there to be a waiver under the agreement, because the rights afforded under the statute are of a class which are inferentially waived if not raised prior to or during trial. D.C. Code 1981, §§ 24-701 to 24-705; Criminal Rule 12. *Jenkins v. United States*, 483 A.2d 660, 1984 D.C. App. LEXIS 513 (1984), writ of certiorari denied by 469 U.S. 1224, 105 S. Ct. 1215, 84 L. Ed. 2d 356, 1985 U.S. LEXIS 1061, 53 U.S.L.W. 3598 (1985).

"Good cause" which would alleviate effect of defendant's waiver of his rights under Interstate Agreement on Detainers Act did not exist where trial counsel was required to prepare pretrial motions, complete investigation and discovery, and prepare for trial under "hurried circumstances." D.C. Code 1981, §§ 24-701 to 24-705; Criminal Rule 12(d). *Jenkins v. United States*, 483 A.2d 660, 1984 D.C. App. LEXIS 513 (1984), writ of certiorari denied by 469 U.S. 1224, 105 S. Ct. 1215, 84 L. Ed. 2d 356, 1985 U.S. LEXIS 1061, 53 U.S.L.W. 3598 (1985).

Despite the seeming mandatory language of the Interstate Agreement on Detainers ordering dismissal of the charges if its provisions are violated, the courts have assumed that the rights conferred can be waived by a prisoner. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note; D.C. Code SCR, Criminal Rule 12. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Traditional standard for the waiver of constitutional rights does not apply to a waiver of a defendant's statutory rights under the Interstate Agreement on Detainers Act. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Absent "good cause shown," a failure to present a claim under the Interstate Agreement on Detainers Act at the trial level constitutes a waiver of those rights. Interstate Agreement on Detainers Act, § 2, arts. I et seq., IV(e), D.C. Code § 24-701 note; D.C. Code SCR, Criminal Rule 12(d). *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct.

2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

A defendant was held to have effectively waived any objections to alleged violations of the Interstate Agreement on Detainers by choosing to go to trial. *United States v. Haigler*, 113 WLR 1985 (Super. Ct. 1985).

Defendant's failure to raise the issue of his Interstate Agreements on Detainers Act rights prior to or during trial constituted a waiver of those rights. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

§ 24-802. Definitions.

(a) The term "Governor" as used in the Agreement on Detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Mayor of the District of Columbia.

(b) The term "appropriate court" as used in the Agreement on Detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending.

(Dec. 9, 1970, 84 Stat. 1402, Pub. L. 91-538, §§ 3, 4.)

Prior Codifications. — 1981 Ed., § 24-702. 1973 Ed., § 24-702.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Habeas corpus.

Petition for writ of habeas corpus is not appropriate means to redress violations of In-

terstate Agreement on Detainers. *King v. Palmer*, 113 WLR 2437 (Super. Ct. 1985).

§ 24-803. Enforcement and cooperation required of parties.

All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with all party states in enforcing the agreement and effectuating its purpose.

(Dec. 9, 1970, 84 Stat. 1402, Pub. L. 91-538, § 5.)

Prior Codifications. — 1981 Ed., § 24-703. 1973 Ed., § 24-703.

§ 24-804. Regulations.

For the United States, the Attorney General, and for the District of Columbia, the Mayor of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this chapter.

(Dec. 9, 1970, 84 Stat. 1403, Pub. L. 91-538, § 6.)

Prior Codifications. — 1981 Ed., § 24-704.
1973 Ed., § 24-704.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 24-805. Reservation of authority.

The right to alter, amend, or repeal this chapter is expressly reserved.

(Dec. 9, 1970, 84 Stat. 1403, Pub. L. 91-538, § 7.)

Prior Codifications. — 1981 Ed., § 24-705. 1973 Ed., § 24-705.

CHAPTER 9. YOUTH OFFENDER PROGRAMS.

Subchapter I. Youth Rehabilitation

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Subchapter III. Closure of Oak Hill Youth Center

24-941. Closure of Oak Hill Youth Center; transfer of operations to new facilities.

Subchapter I. Youth Rehabilitation.

§ 24-901. Definitions.

For purposes of this subchapter, the term:

(1) "Committed youth offender" means an individual committed pursuant to this subchapter.

(2) "Conviction" means the judgment on a verdict or a finding of guilty, a plea of guilty, or a plea of no contest.

(3) "Court" means the Superior Court of the District of Columbia.

(4) "District" means the District of Columbia.

(5) "Treatment" means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders.

(6) "Youth offender" means a person less than 22 years old convicted of a crime other than murder, first degree murder that constitutes an act of terrorism, and second degree murder that constitutes an act of terrorism.

(Dec. 7, 1985, D.C. Law 6-69, § 2, 32 DCR 4587; June 8, 2001, D.C. Law 13-302, § 9(a), 47 DCR 7249; Oct. 17, 2002, D.C. Law 14-194, § 157, 49 DCR 5306.)

Prior Codifications. — 1981 Ed., § 24-801.

Effect of amendments. — D.C. Law 13-302, in par. (1), deleted "for treatment in the District of Columbia" following "this subchapter".

D.C. Law 14-194 rewrote par. (6) which had read as follows: "(6) 'Youth offender' means a person less than 22 years old convicted of a crime other than murder."

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(a) of the Sentencing Reform Emergency Amendment

Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271).

For temporary (90 day) amendment of section, see §§ 9(a) and 11 of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 9(a) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 9(a) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

Legislative history of Law 6-69. — Law 6-69, the “Youth Rehabilitation Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-47, which was referred to the Committee on the Judiciary. The bill was adopted on first and second readings on June 25, 1985 and July 9, 1985, respectively. Signed by the Mayor on July 29, 1985, it was assigned Act No. 6-72 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-302. — For Law 13-302, see notes following § 24-403.01.

Legislative history of Law 14-194. — Law 14-194, the “Omnibus Anti-Terrorism Act of 2002”, was introduced in Council and assigned Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

CASE NOTES

ANALYSIS

Construction with other law.
Purposes.
Sentencing.

Construction with other law.

District of Columbia’s Sex Offender and Registration Act (SORA) did not apply to offenders sentenced under District of Columbia Youth Rehabilitation Act (YRA) for offenses committed before effective date of amendment of YRA, who had their convictions set aside; a youth offender whose conviction had been set aside under the YRA and whose offense predated effective date of amendment continued to enjoy a liberty interest in maintaining the benefits of his set-aside. *Doe #1 v. Williams*, 167 F.Supp.2d 45, 2001 U.S. Dist. LEXIS 21699 (2001), reversed in part by, dismissed in part by 2003 U.S. App. LEXIS 12570 (D.C. Cir. June 19, 2003).

Delay of less than four months between indictment for carrying pistol without license and hearing where indictment was dismissed with prejudice due to Government’s failure to secure defendant’s presence from Maryland where he was incarcerated and facing trial did not violate defendant’s right to speedy trial; government’s apparent lack of efficiency in attempting to secure defendant’s presence was not intentional delay tactic, defendant never asserted speedy trial demand, while counsel sought dismissal for lack of prosecution, not speedy trial violation, and defendant failed to show prejudice from delay, since he was already being held in Maryland and facing trial on more serious charges or that his ineligibility for sentencing under District of Columbia Youth Sentencing Act would have been due to Government’s fault in delay. *United States v. Stephenson*, 891 A.2d 1076, 2006 D.C. App. LEXIS 31 (2006).

Trial court lacked jurisdiction to enforce treatment under Youth Rehabilitation Act on

behalf of inmate based on the All Writs Act, where court lacked original jurisdiction to enforce inmate’s sentence; under Act, court could take action necessary and appropriate “in aid of” its jurisdiction, but Act did not create independent basis for jurisdiction where court otherwise had none. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

Trial court lacked jurisdiction to consider inmate’s petition, requesting that court enforce certain treatment under the Youth Rehabilitation Act on his behalf, under statute setting forth remedies on motion attacking sentence; statute expressly set forth relief for only four circumstances, inmate failed to assert any of the four grounds for relief, and inmate’s petition was in essence a habeas petition. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

Trial court properly considered inmate’s motion, requesting that court enforce certain treatment under the Youth Rehabilitation Act on his behalf, to be a petition for writ of habeas corpus; in his motion, inmate relied on statute governing writ of habeas corpus as basis for jurisdiction, and inmate alleged that failure of Bureau of Prisons to meet his special educational needs was precluding him from being prepared to take General Educational Development (GED) exam, which deprived him of eligibility for parole. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

Trial court lacked jurisdiction to consider inmate’s habeas petition, requesting that court enforce certain treatment under the Youth Rehabilitation Act on his behalf, under statute governing writ of habeas corpus; only proper respondent in habeas action was inmate’s custodian, trial court did not have personal jurisdiction over custodian for inmate who was housed outside of district, and thus, court lacked jurisdiction to hear case since inmate’s custodian was not located within district.

United States v. Crockett, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

Purposes.

The primary objectives of this chapter are: (1) To give the court flexibility in sentencing a youth offender according to his individual needs; (2) to separate youth offenders from more mature, experienced offenders; and (3) to provide an opportunity for a deserving youth offender to start anew through expungement of

his criminal record. United States v. Wheeler, 115 WLR 2025 (Super. Ct. 1987).

Sentencing.

Defendant's age at time he was convicted on guilty plea to unlawful distribution of cocaine, and not age at time of sentencing, determined defendant's eligibility for sentencing under Youth Rehabilitation Act. Holloway v. United States, 951 A.2d 59, 2008 D.C. App. LEXIS 266 (2008).

§ 24-902. Facilities for treatment and rehabilitation.

(a) The Mayor shall provide facilities and personnel for the treatment and rehabilitation of youth offenders convicted of misdemeanor offenses under District of Columbia law and sentenced according to this subchapter.

(b)(1) The Mayor shall periodically set aside and adapt facilities for the treatment, care, education, vocational training, rehabilitation, segregation, and protection of youth offenders convicted of misdemeanor offenses.

(2) Insofar as practical, these institutions maintained by the District of Columbia shall treat committed youth offenders convicted of misdemeanor offenses only, and the youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

(c) The Federal Bureau of Prisons is authorized to provide for the custody, care, subsistence, education, treatment, and training of youth offenders convicted of felony offenses and sentenced to commitment.

(Dec. 7, 1985, D.C. Law 6-69, § 3, 32 DCR 4587; June 8, 2001, D.C. Law 13-302, § 9(b), 47 DCR 7249.)

Prior Codifications. — 1981 Ed., § 24-802.

Effect of amendments. — D.C. Law 13-302 rewrote the section which had read:

"(a) The Mayor shall provide facilities and personnel for the treatment and rehabilitation of youth offenders convicted under District of Columbia law and sentenced according to this subchapter.

"(b)(1) The Mayor shall periodically set aside and adapt facilities for the treatment, care, education, vocational training, rehabilitation, segregation, and protection of youth offenders.

"(2) Insofar as practical, these institutions shall treat committed youth offenders only, and the youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment."

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(b) of the Sentencing Reform Emergency Amendment Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271).

For temporary (90 day) amendment of section, see § 9(b) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 9(b) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 9(b) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

Legislative history of Law 6-69. — For legislative history of D.C. Law 6-69, see Historical and Statutory Notes following § 24-901.

Legislative history of Law 13-302. — For Law 13-302, see notes following § 24-403.01.

§ 24-903. Sentencing alternatives.

(a)(1) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

(2) The court, as part of an order of probation of a youth offender between the ages of 15 and 18 years, shall require the youth offender to perform not less than 90 hours of community service for an agency of the District government or a nonprofit or other community service organization, unless the court determines that the youth offender is physically or mentally impaired and that an order of community service would be unjust or unreasonable.

(3) Within 120 days of January 31, 1990, the Mayor shall develop and furnish to the court a youth offender community service plan. The plan shall include:

(A) Procedures to certify a nonprofit or community service organization for participation in the program;

(B) A list of agencies of the District government or non-profit or community service organizations to which a youth offender may be assigned for community service work;

(C) A description of the community service work to be performed by a youth offender in each of the named agencies or organizations;

(D) Procedures to monitor the attendance and performance of a youth offender assigned to community service work;

(E) Procedures to report to the court a youth offender's absence from a court-ordered community service work assignment; and

(F) Procedures to notify the court that a youth offender has completed the community service ordered by the court.

(4) If the court unconditionally discharges a youth offender from probation pursuant to § 24-906(b), the court may discharge the youth offender from any uncompleted community service requirement in excess of 90 hours. The court shall not discharge the youth offender from completion of the minimum of 90 hours of community service.

(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may sentence the youth offender for treatment and supervision pursuant to this subchapter up to the maximum penalty of imprisonment otherwise provided by law. The youth offender shall serve the sentence of the court unless sooner released as provided in § 24-904.

(c) Where the court finds that a person is a youth offender and determines that the youth offender will derive benefit from the provisions of this subchapter, the court shall make a statement on the record of the reasons for its determination. The youth offender shall be entitled to present to the court facts that would affect the decision of the court to sentence the youth offender pursuant to the provisions of this subchapter.

(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) of this section, then the court may sentence the youth offender under any other applicable penalty provision.

(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsection (b) of this section, the court may order that the youth offender be committed for observation and study at an appropriate classification center or agency. Within 60 days from the date of the order or an additional period that the court may grant, the court shall receive the report.

(f) Subsections (a) through (e) of this section provide sentencing alternatives in addition to the options already available to the court.

(Dec. 7, 1985, D.C. Law 6-69, § 4, 32 DCR 4587; Jan. 31, 1990, D.C. Law 8-61, § 2, 36 DCR 5798.)

Prior Codifications. — 1981 Ed., § 24-803.

Legislative history of Law 6-69. — For legislative history of D.C. Law 6-69, see Historical and Statutory Notes following § 24-901.

Legislative history of Law 8-61. — Law 8-61, the "Youth Offender Community Service Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-138, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-84 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to Law 6-69, see Mayor's Order 87-61, March 10, 1987.

CASE NOTES

ANALYSIS

Burden of proof.
Plea agreements.
Probation revocation.
Review.
Sentencing.
Speedy trial.

Burden of proof.

Burden is on the youthful offender to show that he or she would derive a benefit in order to obtain Youth Rehabilitation Act treatment, and burden is not on the Government to convince the court that there would be no benefit. D.C. Code 1981, § 24-803(d). *Smith v. United States*, 597 A.2d 377, 1991 D.C. App. LEXIS 263 (1991).

Plea agreements.

Plea agreement which expressly stated that it was voidable by either party if judge sentenced defendant under the Youth Rehabilitation Act (YRA) violated provision of Rule 11 that plea agreement which recommends sentence may not be withdrawn by defendant if the court does not accept the recommendation and Rule 11 prohibition on the recommendations being binding on the court. D.C. Code 1981, § 24-806; Criminal Rule 11(e). *Williams v. United States*, 656 A.2d 288, 1995 D.C. App. LEXIS 63 (1995).

Plea agreement which provided that it could be voided by either party if court imposed Youth Rehabilitation Act (YRA) sentence did not result in manifest injustice, even though it vio-

lated Rule 11, where defendant received dismissal of felony murder and other charges in exchange, conviction for murder would disqualified from YRA eligibility in any event, defendant stated that he would not have been asking for YRA study even in the absence of the plea agreement, plea agreement played only minor role in judge's decision to sentence defendant as adult, and defendant was no longer eligible for YRA sentencing when he sought to withdraw guilty plea. D.C. Code 1981, § 24-806; Criminal Rule 11(e). *Williams v. United States*, 656 A.2d 288, 1995 D.C. App. LEXIS 63 (1995).

Probation revocation.

Trial court's questioning of witness during probation revocation hearing under Youth Rehabilitation Act was appropriate follow-up about subject that witness had testified about with regard to items seized from probationer's room, and did not amount to error, let alone plain error. D.C. Code 1981, § 24-803(a). *Handon v. United States*, 651 A.2d 814, 1994 D.C. App. LEXIS 239 (1994).

Trial court did not improperly act as expert witness in probation revocation hearing under Youth Rehabilitation Act when it concluded that location of probationer's palm print on gun indicated that probationer had loaded gun, as it was clear that trial court's conclusion rested on expert testimony of officer and manner in which deputy marshal cleared gun in open court. D.C. Code 1981, § 24-803(a). *Handon v. United States*, 651 A.2d 814, 1994 D.C. App. LEXIS 239 (1994).

While inositol discovered in probationer's room was not itself controlled substance, substance was used to cut heroin, and trial court might well have deemed combination of inositol and ziplock bags as drug paraphernalia, and could rationally infer that probationer in possession of such paraphernalia and also handgun had not removed himself from world of drug trafficking, in probation revocation proceeding under Youth Rehabilitation Act, since all that needed to be done to place large quantity of heroin packets in hands of street vendors was to add small amounts of that narcotic to contents of each ziplock bag containing inositol. D.C. Code 1981, § 24-803(a). *Handon v. United States*, 651 A.2d 814, 1994 D.C. App. LEXIS 239 (1994).

Upon revocation of probation under Youth Rehabilitation Act sentence of ten to 30 years for offense of attempted distribution of cocaine was within statutory limits and, thus, its severity was not subject to review. D.C. Code 1981, §§ 24-803(a), 33-541(a)(2)(A), 33-549. *Handon v. United States*, 651 A.2d 814, 1994 D.C. App. LEXIS 239 (1994).

Under Youth Rehabilitation Act, sentencing judge had to make explicit finding that offender would not benefit from continued treatment under Act before revoking probation and sentencing offender as adult. D.C. Code 1981, § 24-803(a). *Handon v. United States*, 651 A.2d 814, 1994 D.C. App. LEXIS 239 (1994).

Court was authorized to rescind Youth Rehabilitation Act status of youthful offender placed on probation. D.C. Code 1981, § 24-803. *Smith v. United States*, 597 A.2d 377, 1991 D.C. App. LEXIS 263 (1991).

Upon revoking Youth Rehabilitation Act sentence of probation, court was required to make an explicit "no benefit" finding before imposing an adult sentence. D.C. Code 1981, § 24-803. *Smith v. United States*, 597 A.2d 377, 1991 D.C. App. LEXIS 263 (1991).

Review.

On appeal from determination that juvenile will receive no further benefit from continued treatment under Youth Rehabilitation Act and should be transferred to adult facility, trial judge is required to allow youthful offender opportunity to prove that his due process rights were violated during disciplinary proceedings where disciplinary report forms basis for "no-further-benefit" determination. D.C. Code 1981, §§ 24-801 et seq., 24-805; U.S.C. Const.Amends. 5, 14. *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

Youth offender will be precluded from presenting evidence of procedural violations in disciplinary proceeding in which there is determination as to whether juvenile would receive any further benefit from continued treatment

under Youth Rehabilitation Act and should be transferred to adult facility if youth offender had timely notice of right to appeal and failed to exhaust Departmental remedies. D.C. Code 1981, §§ 24-801 et seq., 24-805. *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

Sentencing.

Trial court lacked jurisdiction, under provision of statute allowing sentencing judge to review Department of Corrections determinations that a youth offender would derive "no further benefit" from treatment under the Youth Rehabilitation Act, to order the Bureau of Prisons (BOP) to house inmate only with other Youth Act offenders and to provide educational services; plain language of Act did not authorize court to order BOP to provide services to offender after he was sentenced, and there was nothing in Act or case law which gave court jurisdiction to order jailor to provide offender specific services. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

A sentence under the Youth Rehabilitation Act (YRA), a statute that mandates treatment for certain offenders a judge has determined will benefit under the YRA, guides the discretion of the Board of Parole in setting parole reconsideration dates. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

Because the governing statute and regulation vest in the Board of Parole substantial discretion in granting or denying parole, prisoners generally have no statutory or constitutional interest in a parole reconsideration date. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

Incapacitation of the offender for prevention, deterrence, and punishment are appropriate considerations in sentencing decisions under the Youth Rehabilitation Act (YRA). *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

Requirement in sentence that defendant convicted of aggravated assault and sentenced under Youth Act obtain high school equivalency diploma, job training, and alcohol and drug counseling before his release from prison was impermissible, as authority to determine release date lay with Youth Act authorities. *Palacio-Escoto v. United States*, 764 A.2d 795, 2001 D.C. App. LEXIS 2 (2001).

Under the Youth Act, release is to be determined, not by the court, but rather by the Youth Act authorities, and the actual duration of the treatment period is determined by the Youth Correction authorities. *Palacio-Escoto v. United States*, 764 A.2d 795, 2001 D.C. App. LEXIS 2 (2001).

Trial court had discretion under youth offender statute to grant relief *nunc pro tunc* to

set aside defendant's convictions for simple assault when recommendation of unconditional discharge and set-aside was filed belatedly, but within reasonable time after expiration of defendant's probation, where offender, government, and trial judge all agreed that convictions should be set aside. *Argueta v. United States*, 759 A.2d 1067, 2000 D.C. App. LEXIS 262 (2000).

Trial court met requirements of Youth Rehabilitation Act by weighing and rejecting option of sentencing defendant under Act, for voluntary manslaughter, assault, and weapon convictions. D.C. Code 1981, §§ 22-502, 22-2405, 22-3202, 22-3204, 24-801 et seq. *Edwards v. United States*, 721 A.2d 938, 1998 D.C. App. LEXIS 223 (1998).

Upon sentencing of defendant on multiple charges under the Youth Rehabilitation Act (YRA), sentences would run consecutively unless the sentencing judge provided otherwise; adult sentencing rule requiring multiple sentences to be served consecutively, unless the judge specified otherwise, also applied to sentences under the YRA. D.C. Code 1981, §§ 23-112, 24-801 et seq. *Bragdon v. United States*, 717 A.2d 878, 1998 D.C. App. LEXIS 177 (1998).

Adult sentence may be imposed Under District of Columbia Youth Act (DCYRA), if record reflects that judge was aware of availability under Act of youth offender treatment, that he considered that rehabilitative option, and that he rejected it. D.C. Code 1981, § 24-803(d, f). *Veney v. United States*, 681 A.2d 428, 1996 D.C. App. LEXIS 145 (1996).

Sentencing proceedings for 19-year-old defendant who pleaded guilty to voluntary manslaughter and was sentenced as adult were in compliance with District of Columbia Youth Act (DCYRA) where oral sentence showed that judge was aware of his authority under DCYRA to sentence defendant as youth offender, judge entertained defense counsel's claims that defendant was appropriate candidate for rehabilitation but judge expressly evaluated, on record, potential benefits said to be available to defendant at Youth Center and concluded, that risk of danger to community which youth offender sentence would entail trumped any such benefits. D.C. Code 1981, § 24-803(d, f). *Veney v. United States*, 681 A.2d 428, 1996 D.C. App. LEXIS 145 (1996).

Statute does not require sentencing judge to make express finding that age-eligible offender will not derive benefit from Youth Rehabilitation Act (YRA) treatment before imposing adult sentence and, in any event, overall record of sentencing in the instant case was sufficient to show that trial court explicitly considered option of sentencing defendant under YRA and rejected it. D.C. Code 1981, §§ 24-801 et seq.,

24-803(c, d). *Peterson v. United States*, 657 A.2d 756, 1995 D.C. App. LEXIS 66 (1995).

Although Youth Rehabilitation Act is premised on assumption that expert advice will aid the trial judge in deciding whether defendant should be sentenced under the Act, sentencing judge is not required to follow the expert's recommendation. D.C. Code 1981, § 24-803. *Foster v. United States*, 615 A.2d 213, 1992 D.C. App. LEXIS 262 (1992).

Trial court's ex parte communication to Parole Board concerning apparent inconsistency between Parole Board's recommendation and recommendation of the Classification Committee with respect to possible Youth Rehabilitation Act sentencing of defendant was harmless. ABA Code of Jud. Conduct, Canon 3, subd. A(4); D.C. Code 1981, § 24-803. *Foster v. United States*, 615 A.2d 213, 1992 D.C. App. LEXIS 262 (1992).

At least where Government seeks to rely upon decisions in disciplinary process as basis for determination that juvenile would receive no further benefit from continued treatment under Youth Rehabilitation Act and should be transferred to adult facility, youth offender may raise in hearing before sentencing judge any due process challenges to validity of disciplinary proceedings. D.C. Code 1981, §§ 24-801 et seq., 24-805; U.S. Const. Amends. 5, 14. *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

On appeal from disciplinary hearing in which determination is made that juvenile would receive no further benefit from continued treatment under Youth Rehabilitation Act and should be transferred to adult facility, sentencing judge must conduct hearing at which youth offender is allowed to allocate and present evidence regarding alleged violation of his due process rights protected by Corrections Department regulations at disciplinary proceedings which constitute basis for Department's "no-further-benefit" determination and judge must then make findings on whether violations occurred, and if they did, determine whether untainted evidence is sufficient to sustain Director's determination. D.C. Code 1981, §§ 24-801 et seq., 24-805; U.S.C. Const. Amends. 5, 14. *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

Anomaly existed in Youth Rehabilitation Act (YRA) in that YRA made automatic set aside of convictions unavailable to youth offender who received YRA sentence of one year or less, but permitted set asides for longer sentences. D.C. Code 1981, §§ 24-801 to 24-807, 24-803(b), 24-804(a, b). *Latimore v. United States*, 597 A.2d 362, 1991 D.C. App. LEXIS 254 (1991).

Remand was required for resentencing de novo under Youth Rehabilitation Act (YRA) in light of uncertainty as to trial court's reasons for sentencing under YRA and anomaly in YRA

which made automatic set aside of convictions unavailable to youth offender who received YRA sentence of year or less, but permitted such set aside for longer sentences. D.C. Code 1981, §§ 24-801 to 24-807, 24-803(b), 24-804, 24-804(a, b), 24-806(a). *Latimore v. United States*, 579 A.2d 362, 1991 D.C. App. LEXIS 254 (1991).

Defendant's claim that Youth Act was unconstitutional because it required sentencing judge to provide statement of reasons only when imposing youth sentence but not when imposing adult sentence was not considered where sentencing judge, in imposing adult sentence which had effect of nullifying Youth Act sentence by another judge, provided defendant with reasons, even though she was under no statutory obligation to do so. D.C. Code 1981, § 24-803(c); *U.S. Const. Amend. 5. Allen v. United States*, 580 A.2d 653, 1990 D.C. App. LEXIS 222 (1990).

Trial judge did not exceed her authority under Youth Rehabilitation Act in imposing requirement that offender pay child support as condition of probation. D.C. Code 1981, §§ 24-801 to 24-807. *Brown v. United States*, 579 A.2d 1158, 1990 D.C. App. LEXIS 217 (1990).

Trial judge abused her discretion in setting amount of child support payment imposed as condition of probation under Youth Rehabilitation Act, where she imposed condition that youth offender pay child support of \$50 per week without making findings as to needs of his children and his ability to pay and in absence of demand for payment from children's mother. D.C. Code 1981, §§ 24-801 to 24-807. *Brown v.*

United States, 579 A.2d 1158, 1990 D.C. App. LEXIS 217 (1990).

Upon revocation of probation, a sentence of confinement imposed under this chapter may exceed in length an adult sentence of incarceration originally imposed and suspended. *United States v. Wheeler*, 115 WLR 2025 (Super. Ct. 1987).

Speedy trial.

Loss of opportunity to be considered for youthful offender treatment is prejudice of sort germane to speedy trial analysis, but this harm still must be considered and balanced against the other Barker factors involved in the weighing analysis. *U.S. Const. Amend. 6*; D.C. Code 1981, §§ 24-801 to 24-807. *Dickerson v. United States*, 650 A.2d 680, 1994 D.C. App. LEXIS 224 (1994).

Constitutional right to speedy trial was not violated by 24-month delay between initial arrest and commencement of trial, where 44 days were attributable to government's negligence in losing its file and 85 days to government's request for continuances because of committed leave of its various witnesses, and other delay was attributable to counsel for codefendant, and where defendant did not assert right to speedy trial in trial court, despite claim of prejudice in that, during the delay, defendant became 22 years of age and no longer eligible for sentencing under the Youth Rehabilitation Act (YRA). *U.S. Const. Amend. 6*; D.C. Code 1981, §§ 24-801 to 24-807. *Dickerson v. United States*, 650 A.2d 680, 1994 D.C. App. LEXIS 224 (1994).

§ 24-904. Conditional release; unconditional discharge.

(a) A committed youth offender may be released conditionally under supervision whenever appropriate.

(b) A committed youth offender may be unconditionally discharged at the end of 1 year from the date of conditional release.

(c) Notwithstanding any other provision of law, subsections (a) and (b) of this section shall not apply to a youth offender convicted of any offense committed on or after August 5, 2000.

(Dec. 7, 1985, D.C. Law 6-69, § 5, 32 DCR 4587; June 8, 2001, D.C. Law 13-302, § 9(c), 47 DCR 7249.)

Section references. — This section is referred to in § 24-903.

Prior Codifications. — 1981 Ed., § 24-804.

Effect of amendments. — D.C. Law 13-302 added subsec. (c).

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(c) of the Sentencing Reform Emergency Amendment Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271).

For temporary (90 day) amendment of section, see § 9(c) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 9(c) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 9(c) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

Legislative history of Law 6-69. — For legislative history of D.C. Law 6-69, see Historical and Statutory Notes following § 24-901.

Legislative history of Law 13-302. — For Law 13-302, see notes following § 24-403.01.

CASE NOTES

In general.

The appropriateness of release from parole under the Youth Rehabilitation Act (YRA) must depend, at least in part, on a consideration of youthful offender's treatment and rehabilitation. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

Under the Youth Rehabilitation Act (YRA), the Board of Parole is obliged to make its parole decisions, including the decision to set off reconsideration for parole, in light of the youthful offender's potential or actual progress, or lack thereof, in his program of treatment. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

When exercising its discretion in regard to a youthful offender sentenced under the Youth Rehabilitation Act (YRA), the Board of Parole must evaluate the youthful offender's rehabilitation and past and likely future progress in treatment, even if its determination is ultimately based on other considerations. *Wells v.*

Golden, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

The fact that youthful offender who is sentenced under the Youth Rehabilitation Act (YRA) may petition the Board of Parole for an earlier reconsideration date under parole regulation does not absolve the Board of its responsibility to take all relevant factors into consideration in setting a reconsideration date in the first instance. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

In regard to youthful offender who was sentenced under the Youth Rehabilitation Act (YRA) for armed robbery and firearm offenses, remand to the Board of Parole was required following youthful offender's appeal of Board's decision to set parole reconsideration at a date ten years after sentence began, as it was unclear whether Board considered YRA's rehabilitative goal. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

§ 24-905. Determination that youth offender will derive no further benefit; appeal.

(a) If the Director of the Department of Corrections ("Director") determines that a youth offender will derive no further benefit from the treatment pursuant to this subchapter, the Director shall notify the youth offender of this determination in a written statement that includes the following:

(1) Notice that the youth offender may appeal the Director's determination to the sentencing judge in writing within 30 days of the youth offender's receipt of the Director's statement required by this section;

(2) Specific reasons for the Director's no further benefit determination; and

(3) Notice that an appeal by the youth offender to the sentencing judge will stay any action by the Director regarding a change in the youth offender's status until the sentencing judge makes a determination on the appeal.

(b) The decision of the sentencing judge on the appeal of the youth offender shall be considered a final disposition of the appeal and shall preclude further action by the Director to change the status of a youth offender for a 6-month period from the date of the sentencing judge's decision.

(c) Notwithstanding any other provision of law, subsections (a) and (b) of this section shall not apply to a youth offender convicted of any offense committed on or after August 5, 2000.

(Dec. 7, 1985, D.C. Law 6-69, § 6, 32 DCR 4587; June 8, 2001, D.C. Law 13-302, § 9(d), 47 DCR 7249.)

Prior Codifications. — 1981 Ed., § 24-805.

Effect of amendments. — D.C. Law 13-302 added subsec. (c).

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(d) of the Sentencing Reform Emergency Amendment Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271).

For temporary (90 day) amendment of section, see § 9(d) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of sec-

tion, see § 9(d) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 9(d) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

Legislative history of Law 6-69. — For legislative history of D.C. Law 6-69, see Historical and Statutory Notes following § 24-901.

Legislative history of Law 13-302. — For Law 13-302, see notes following § 24-403.01.

CASE NOTES

Review.

Trial court lacked jurisdiction, under provision of statute allowing sentencing judge to review Department of Corrections determinations that a youth offender would derive "no further benefit" from treatment under the Youth Rehabilitation Act, to order the Bureau of Prisons (BOP) to house inmate only with other Youth Act offenders and to provide educational services; plain language of Act did not authorize court to order BOP to provide services to offender after he was sentenced, and there was nothing in Act or case law which gave court jurisdiction to order jailor to provide offender specific services. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

Unless and until there has been a final determination pursuant to the procedures set out in the Youth Rehabilitation Act (YRA) that a youthful offender will derive "no further benefit from the treatment" under the YRA, the Board of Parole's decisions are constrained by the sentencing judge's determination that the offender will derive benefit from treatment under the YRA. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

On appeal from determination that juvenile will receive no further benefit from continued treatment under Youth Rehabilitation Act and should be transferred to adult facility, trial judge is required to allow youthful offender opportunity to prove that his due process rights were violated during disciplinary proceedings where disciplinary report forms basis for "no-further-benefit" determination. D.C. Code 1981, §§ 24-801 et seq., 24-805; U.S.C. Const.Amends. 5, 14. *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

At least where Government seeks to rely upon decisions in disciplinary process as basis for determination that juvenile would receive no further benefit from continued treatment under Youth Rehabilitation Act and should be

transferred to adult facility, youth offender may raise in hearing before sentencing judge any due process challenges to validity of disciplinary proceedings. D.C. Code 1981, §§ 24-801 et seq., 24-805; U.S. Const.Amends. 5, 14. *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

On appeal from disciplinary hearing in which determination is made that juvenile would receive no further benefit from continued treatment under Youth Rehabilitation Act and should be transferred to adult facility, sentencing judge must conduct hearing at which youth offender is allowed to allocate and present evidence regarding alleged violation of his due process rights protected by Corrections Department regulations at disciplinary proceedings which constitute basis for Department's "no-further-benefit" determination and judge must then make findings on whether violations occurred, and if they did, determine whether untainted evidence is sufficient to sustain Director's determination. D.C. Code 1981, §§ 24-801 et seq., 24-805; U.S.C. Const.Amends. 5, 14. *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

Youth offender will be precluded from presenting evidence of procedural violations in disciplinary proceeding in which there is determination as to whether juvenile would receive any further benefit from continued treatment under Youth Rehabilitation Act and should be transferred to adult facility if youth offender had timely notice of right to appeal and failed to exhaust Departmental remedies. D.C. Code 1981, §§ 24-801 et seq., 24-805. *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

In the absence of any claim, much less showing, that administrative remedy is unavailable or inadequate, youth offender, who is given notice of his procedural rights within Corrections Department, will be precluded from complaining about denial of those rights on appeal from disciplinary hearing in which determina-

tion is made that youth offender would receive no further benefit from continued treatment under Youth Rehabilitation Act and should be transferred to adult facility, unless offender has

first exhausted Departmental appeals. D.C. Code 1981, § 24-805(a)(3). *Vaughn v. United States*, 598 A.2d 425, 1991 D.C. App. LEXIS 295 (1991).

§ 24-906. Unconditional discharge sets aside conviction.

(a) Upon unconditional discharge of a committed youth offender before the expiration of the sentence imposed, the youth offender's conviction shall be automatically set aside.

(b) If the sentence of a committed youth offender expires before unconditional discharge, the United States Parole Commission may, in its discretion, set aside the conviction.

(c) Where a youth offender is sentenced to commitment and a term of supervised release for a felony committed on or after August 5, 2000, and the United States Parole Commission exercises its authority pursuant to 18 U.S.C. § 3583(e)(1) to terminate the term of supervised release before its expiration, the youth offender's conviction shall be automatically set aside.

(d) In any case in which the youth offender's conviction is set aside, the youth offender shall be issued a certificate to that effect.

(e) Where a youth offender has been placed on probation by the court, the court may, in its discretion, unconditionally discharge the youth offender from probation before the end of the maximum period of probation previously fixed by the court. The discharge shall automatically set aside the conviction. If the sentence of a youth offender who has been placed on probation by the court expires before unconditional discharge, the court may, in its discretion, set aside the conviction. In any case where the court sets aside the conviction of a youth offender, the court shall issue to the youth offender a certificate to that effect.

(f) A conviction set aside under this section may be used:

(1) In determining whether a person has committed a second or subsequent offense for purposes of imposing an enhanced sentence under any provision of law;

(2) In determining whether an offense under § 48-904.01 is a second or subsequent violation under § 24-112;

(3) In determining an appropriate sentence if the person is subsequently convicted of another crime;

(4) For impeachment if the person testifies in his own defense at trial pursuant to § 14-305;

(5) For cross-examining character witnesses;

(6) For sex offender registration and notification;

(7) For gun offender registration pursuant to subchapter VIII of Chapter 25 of Title 7, for convictions on or after January 1, 2011; or

(8) In determining whether a person has been in possession of a firearm in violation of § 22-4503.

(Dec. 7, 1985, D.C. Law 6-69, § 7, 32 DCR 4587; June 28, 1991, D.C. Law 9-7, § 2, 38 DCR 1978; Aug. 17, 1991, D.C. Law 9-15, § 2, 38 DCR 3382; June 8, 2001, D.C. Law 13-302, § 9(e), 47 DCR 7249; June 3, 2011, D.C. Law 18-377, § 17, 58 DCR 1174.)

Section references. — This section is referred to in § 24-903.

Prior Codifications. — 1981 Ed., § 24-806.

Effect of amendments. — D.C. Law 13-302 rewrote the section which had read:

“(a) Upon the unconditional discharge of a committed youth offender before the expiration of the maximum sentence imposed, the District of Columbia Board of Parole shall automatically set aside the conviction.

“(b) If the maximum sentence of a committed youth offender expires before unconditional discharge, the District of Columbia Board of Parole may, in its discretion, set aside the conviction.

“(c) In any case in which the District of Columbia Board of Parole sets aside the conviction of a committed youth offender, the Board shall issue to the youth offender a certificate to that effect.

“(d) Where a youth offender has been placed on probation by the court, the court may, in its discretion, unconditionally discharge the youth offender from probation before the end of the maximum period of probation previously fixed by the court. The discharge shall automatically set aside the conviction and the court shall issue to the youth offender a certification to that effect.”

D.C. Law 18-377, in subsec. (f), deleted “or” from the end of par. (5), substituted a semicolon for a period at the end of par. (6), and added pars. (7) and (8).

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(e) of the Sentencing Reform Emergency Amendment Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271).

For temporary (90 day) amendment of section, see § 9(e) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 9(e) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 9(e) of Sentencing Reform Second

Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

For temporary (90 day) amendment of section, see § 517 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 517 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 6-69. — For legislative history of D.C. Law 6-69, see Historical and Statutory Notes following § 24-901.

Legislative history of Law 9-7. — Law 9-7, the “Youth Rehabilitation Amendment Act of 1985 Temporary Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-99. The Bill was adopted on first and second readings on February 5, 1991, and March 5, 1991, respectively. Signed by the Mayor on March 15, 1991, it was assigned Act No. 9-13 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-15. — Law 9-15, the “Youth Rehabilitation Amendment Act of 1985 Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-109, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was assigned Act No. 9-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-302. — For Law 13-302, see notes following § 24-403.01.

Legislative history of Law 18-377. — Law 18-377, the “Criminal Code Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-963, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 2, 2011, it was assigned Act No. 18-722 and transmitted to both Houses of Congress for its review. D.C. Law 18-377 became effective on June 3, 2011.

§ 24-907. Rules.

The Mayor may issue rules to implement the provisions of this subchapter pursuant to subchapter I of Chapter 5 of Title 2.

(Dec. 7, 1985, D.C. Law 6-69, § 8, 32 DCR 4587; June 8, 2001, D.C. Law 13-302, § 9(f), 47 DCR 7249.)

Prior Codifications. — 1981 Ed., § 24-807.

Effect of amendments. — D.C. Law 13-302, in the section heading, deleted “; division of responsibility”; and deleted “, including the division of responsibility between the District of Columbia Board of Parole and the District of Columbia Department of Corrections” following “Title 2,”.

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(f) of the Sentencing Reform Emergency Amendment Act of 2000 (D.C. Act 13-410, August 11, 2000, 47 DCR 7271).

For temporary (90 day) amendment of section, see § 9(f) of the Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 9(f) of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 9(f) of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

Legislative history of Law 6-69. — For legislative history of D.C. Law 6-69, see Historical and Statutory Notes following § 24-901.

Legislative history of Law 13-302. — For Law 13-302, see notes following § 24-403.01.

Delegation of Authority. — Delegation of authority pursuant to Law 6-69, see Mayor’s Order 87-61, March 10, 1987.

Subchapter II. BOOT CAMP Program.

§ 24-921. Definitions.

For the purposes of this subchapter, the term:

(1) “BOOT CAMP” means the Basic Operations Options Training Children to Adults Maturity Program for eligible juvenile offenders, established pursuant to the rules of the Department of Human Services adopted under this subchapter, which provides rigorous physical activity, intensive regimentation, discipline, education, and vocational training for a minimum of 40 participants, to begin the program, for a period of 90 days.

(2) “Eligible juvenile offender” means a youth 14 through 18 years of age who has been committed to the custody of the Youth Services Administration and who:

(A) Has not been previously incarcerated in an adult prison facility and has not committed a crime of violence, as defined in § 22-4501, except burglary and robbery;

(B) Has not been prohibited by a judge or law from participating in the BOOT CAMP;

(C) Has no known contagious or communicable disease;

(D) Has no known mental or physical impairments that would prevent him or her from performing physical activity; and

(E) Agrees to the terms and conditions of the BOOT CAMP.

(Jan. 27, 1994, D.C. Law 10-67, § 101, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-821.

Legislative history of Law 10-67. — Law 10-67, the “Basic Operations Options Training Children to Adults Maturity Program Establishment Act of 1993,” was introduced in Council and assigned Bill No. 10-111, which was referred to the Committee on Human Services.

The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-67 and transmitted to both Houses of Congress for its review. D.C. Law 10-67 became effective on January 27, 1994.

§ 24-922. Establishment of the BOOT CAMP.

The Director of the Department of Human Services ("Director") shall establish a BOOT CAMP that may be used for eligible juvenile offenders who the Department of Human Services may permit to serve their commitment in the BOOT CAMP.

(Jan. 27, 1994, D.C. Law 10-67, § 201, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-822. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-923. Location of BOOT CAMP.

(a) The Director shall use an existing building or set of buildings, which may be located in the Washington Metropolitan area, to establish a residential center for the BOOT CAMP participants.

(b) The residential center shall include classrooms, a counseling and vocational training center, separate sleeping accommodations for male and female participants, a dining facility, outdoor drill and recreation areas, and other usages that are necessary for the efficient operation of the BOOT CAMP.

(Jan. 27, 1994, D.C. Law 10-67, § 202, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-823. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-924. Daily schedule.

The daily schedule at the BOOT CAMP shall include:

(1) An early morning regimen of physical training, military style drilling, and cleaning of residence areas;

(2) Education designed to result in the attainment of a General Equivalency Diploma ("GED"), which may utilize as academic teachers persons who have volunteered their services to the program and who satisfy the appropriate certification criteria;

(3) Vocational training in an employment skill, including wood shop, electrical work, and plumbing, which may utilize as vocational teachers persons who have volunteered their services to the program and who satisfy the appropriate certification criteria;

(4) Employment counseling and a full range of counseling, to include life skills training and stress and anger management;

(5) Appropriate physical labor; and

(6) Daily group meetings, substance abuse counseling, and organized physical recreation.

(Jan. 27, 1994, D.C. Law 10-67, § 203, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-824. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-925. Evaluation process.

The Director shall establish a system of evaluating the eligible juvenile offenders, with the purpose of obtaining an objective assessment of each eligible juvenile offender's progress in the BOOT CAMP. The system of evaluation may include weekly evaluations by drill instructors, academic and vocational teachers, substance abuse counselors, and recreation leaders. The results of these evaluations may be used in determining the juvenile offender's eligibility for conditional release or unconditional discharge at the end of the BOOT CAMP.

(Jan. 27, 1994, D.C. Law 10-67, § 204, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-825. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-926. Discipline.

(a) Eligible juvenile offenders are expected to adhere to strict standards of discipline within the BOOT CAMP. Eligible juvenile offenders in the BOOT CAMP will be expected to comply with the following procedures:

- (1) Stand-up count;
- (2) Keeping living areas clean and neat at all times;
- (3) Mandatory attendance at all scheduled functions; and
- (4) Exhibiting respectful behavior towards drill instructors and other personnel.

(b) The Director shall promulgate rules and procedures governing discipline within the BOOT CAMP.

(Jan. 27, 1994, D.C. Law 10-67, § 205, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-826. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-927. Grooming.

The Director shall promulgate regulations regarding grooming habits.

(Jan. 27, 1994, D.C. Law 10-67, § 206, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-827. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-928. Agreement form.

The Director shall promulgate an agreement to be signed by each eligible juvenile offender prior to entering into the BOOT CAMP. The agreement shall describe the terms and conditions of the BOOT CAMP, including a provision that states that participation in the BOOT CAMP is a privilege which may be revoked at any time at the discretion of the Director.

(Jan. 27, 1994, D.C. Law 10-67, § 301, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-828. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-929. Removal.

An eligible juvenile offender participating in the BOOT CAMP may be removed at the discretion of the Director. The Director shall promulgate rules and procedures for removal of an eligible juvenile offender from the BOOT CAMP. The rules and procedures shall include the following provisions:

(1) Removal from the BOOT CAMP for any reason shall be treated as a violation of conditional release.

(2) An eligible juvenile offender may petition for removal from the program. The Director shall grant the petition for removal upon a finding of good cause.

(Jan. 27, 1994, D.C. Law 10-67, § 401, 40 DCR 5768; May 16, 1995, D.C. Law 10-255, § 19, 41 DCR 5193.)

Prior Codifications. — 1981 Ed., § 24-829.
Legislative history of Law 10-67. — For legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 24-930. Graduation.

Upon completion of the BOOT CAMP, a graduation ceremony may be held, at which time earned GED’s may be awarded, as well as other appropriate recognition.

(Jan. 27, 1994, D.C. Law 10-67, § 501, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-830. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-931. Post-BOOT CAMP supervision.

The Director shall promulgate rules establishing a program of continuing supervision for BOOT CAMP participants released on conditional release. The program shall be 9 months in length and shall include participation by the eligible juvenile offender’s family members. The program may include follow-up substance abuse treatment, educational assistance such as tutoring, assistance in seeking employment, and, if appropriate, inclusion in the Mayor’s Mentoring and Volunteerism program, created pursuant to Mayor’s Order 92-24 dated March 4, 1992. The program may utilize volunteers.

(Jan. 27, 1994, D.C. Law 10-67, § 502, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-831. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

§ 24-932. Report.

The Director shall prepare a report assessing the BOOT CAMP, which shall be presented to the Mayor and the Council of the District of Columbia 12 months after the first day of operation of the BOOT CAMP. This report shall include the following:

(1) A summary of the original structure of the pilot program, and a summary of all changes to that original structure, along with the reasons for any changes;

(2) A summary of the effectiveness of the pilot program, according to the Director;

(3) An analysis of the total cost of the pilot program, including cost per participant;

(4) A summary of the standards used to determine removal from the BOOT CAMP;

(5) A listing of the offense(s) committed by each participant which led to his or her commitment to the BOOT CAMP;

(6) A listing of the number of participants who completed the BOOT CAMP, and the number of those who did not complete the program, along with a designation as to the reason for removal from the program;

(7) A summary of the effect of the pilot program on the population at other juvenile facilities;

(8) An analysis of the recidivism rate of eligible juvenile offenders who completed the BOOT CAMP and the recidivism rate of non-completers and a comparison sample of juvenile offenders who participated in a sanction other than the BOOT CAMP; and

(9) Any recommendations as to changes to or expansion of the BOOT CAMP.

(Jan. 27, 1994, D.C. Law 10-67, § 601, 40 DCR 5768.)

Prior Codifications. — 1981 Ed., § 24-832. legislative history of D.C. Law 10-67, see Historical and Statutory Notes following § 24-921.
Legislative history of Law 10-67. — For

Subchapter III. Closure of Oak Hill Youth Center.

§ 24-941. Closure of Oak Hill Youth Center; transfer of operations to new facilities.

The Mayor shall develop and implement a comprehensive plan resulting in the closure of the existing Oak Hill Youth Center facility no later than 4 years after March 17, 2005, and transfer operations to new facilities, one or more of which shall be located on the same property, consistent with the following criteria for a new rehabilitation and treatment model:

(1) No new facility for committed youth shall house more than 40 committed children within the same building, but a facility may contain more than one building;

(2) Plans for the operation of facilities shall incorporate best practices for the provision of rehabilitative and other services and the safety of children,

and shall be consistent with the applicable standards of accreditation of the American Correctional Association;

(3) Individuals appointed by the Mayor shall provide on-site monitoring of the safety of children housed in any secure detention or commitment facility operated by the District of Columbia during all hours of operation; and

(4) Individuals responsible for monitoring the safety of children under paragraph (3) of this subsection shall notify the child's parent or guardian and the child's legal representative whenever a child is injured.

(Mar. 17, 2005, D.C. Law 15-261, § 1102, 52 DCR 1188.)

Legislative history of Law 15-261. — Law 15-261, the "Omnibus Juvenile Justice Act of 2004", was introduced in Council and assigned Bill No. 15-537, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 5,

2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-637 and transmitted to both Houses of Congress for its review. D.C. Law 15-261 became effective on March 17, 2005.

CHAPTER 10. INTERSTATE CORRECTIONS COMPACT.

Sec.
24-1001. Interstate Corrections Compact.

Sec.
24-1002. Additional duties of Mayor.

§ 24-1001. Interstate Corrections Compact.

The Mayor is authorized to enter into and execute on behalf of the District of Columbia a compact with any state or states legally joining in the compact in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

The contracting states solemnly agree that:

ARTICLE I.

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide facilities and programs on a basis of cooperation with one another and with the federal government, thereby serving the best interest of offenders and society, and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II.

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment occurred.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment occurred.

(d) "Inmate" means a male or female offender who is committed or under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including, but not limited to, a facility for the mentally ill, in which inmates as defined in subsection (d) of this article may lawfully be confined.

ARTICLE III.

(a) Each party state may make 1 or more contracts with any 1 or more of the other party states or with the federal government for the confinement of

inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

- (1) Its duration;
 - (2) Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;
 - (3) Participation in programs of inmate employment, if any, the disposition or crediting of any payment received by inmates on account of employment, and the crediting of proceeds from or disposal of any products resulting employment;
 - (4) Delivery and retaking of inmates; and
 - (5) Any other matters necessary to fix the obligations, responsibilities, and rights of the sending and receiving states.
- (b) The terms and provisions of this compact shall be part of any contract entered into by the authority of or pursuant to the compact, and nothing in the contract shall be inconsistent with the compact.

ARTICLE IV.

(a) Whenever the appropriate officials in a state party to this compact and which has entered into a contract pursuant to Article III shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, the appropriate officials may direct that the confinement be within an institution within the territory of the other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which the state has a contractual right to confine inmates for the purpose of inspecting the facilities and visiting the state's inmates confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from the receiving state for transfer to a prison or other institution within the sending state, for transfer to another institution with which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided, that the sending state shall continue to be obligated to payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify the record to the appropriate official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the

disposition of the inmate in accordance with the law which may obtain in the sending state and in order that the record may be a source of information for the sending state.

(e) All inmates confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with similar inmates of the receiving state confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing to which an inmate confined pursuant to this compact may be entitled by the law of the sending state may be conducted before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for the hearings conducted by the appropriate officials of a sending state. In the event the hearing is conducted before appropriate officials of the receiving state, the governing law shall be that of the sending state, and a record of the hearing as prescribed by the sending state shall be made. The record together with any recommendations of the hearing officials shall be transmitted immediately to the appropriate official before whom the hearing would have been conducted if it had taken place in the sending state. In all proceedings conducted pursuant to the provisions of this subsection, the appropriate officials of the receiving state shall act solely as agents of the sending state, and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states agree upon release in some other place. The sending state shall bear the cost of the return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have all rights to participate in and derive any benefits or incur or be relieved of any obligations or have the obligations modified or a change in status on account of any action or proceeding in which he or she could have participated if confined in any appropriate institution of the sending state located within the sending state.

(i) A parent, guardian, trustee, or other person entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or be restricted in the exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V.

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within the receiving state any criminal charge or if the inmate is formally accused of having committed within the receiving state a

criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment, or detention for the offense. The appropriate officials of the sending state shall be permitted to transport inmates pursuant to this compact through all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be a fugitive from the sending state and from the receiving state. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained in this compact shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI.

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any compact pursuant to this act, and any inmate in a receiving state pursuant to this compact may participate in any federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if the program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required for participation in the federally-aided program.

ARTICLE VII.

This compact shall become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall become effective and binding as to any other of the states upon similar action by the state.

ARTICLE VIII.

This compact shall continue in effect and remain binding upon a party state until the party state enacts a statute repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until 1 year after the notice provided in the statute has been sent. The withdrawal shall not relieve the withdrawing state from its obligations assumed under the compact prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, all inmates of the withdrawing state confined pursuant to the provisions of this compact.

ARTICLE IX.

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a

nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X.

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance shall not be affected by the compact. If this compact shall be held contrary to the constitution of any state participating in the compact, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(May 10, 1989, D.C. Law 7-230, § 2, 35 DCR 7736; May 8, 1990, D.C. Law 8-122, § 2, 37 DCR 30.)

Prior Codifications. — 1981 Ed., § 24-1001.

Legislative history of Law 7-230. — Law 7-230, the “Authorization to Enter an Interstate Corrections Compact Temporary Act of 1988,” was introduced in Council and assigned Bill No. 7-542. The Bill was adopted on first and second readings on July 12, 1988, and September 27, 1988, respectively. Signed by the Mayor on October 13, 1988, it was assigned Act No. 7-242 and transmitted to both Houses of Congress for its review. Law 7-230 became effective May 10, 1989.

Legislative history of Law 8-122. — Law 8-122, the “Authorization to Enter the Interstate Corrections Compact Act of 1989,” was introduced in Council and assigned Bill No. 8-247, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-131 and transmitted to both Houses of Congress for its review.

References in text. — “This act,” referred to in Article VI of the compact, is D.C. Law 8-122.

CASE NOTES

ANALYSIS

Good conduct credits.

Jurisdiction.

Review.

Venue.

Good conduct credits.

Inmate transferred under Interstate Corrections Compact (ICC) had no due process liberty interest in any particular level of good conduct credits. U.S. Const. Amends. 5, 14. *Crowell v. Walsh*, 151 F.3d 1050, 1998 U.S. App. LEXIS 16919 (C.A.D.C. 1998).

Jurisdiction.

Interstate Corrections Compact does not expand the jurisdiction of the courts of the District of Columbia over habeas corpus petitions challenging the denial of parole or otherwise contesting the legality of a transferred prison-

er's confinement. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

Review.

District of Columbia would be barred from raising for first time on appeal issues relating to Texas county's motion to dismiss claims of inmates who were originally incarcerated in District but were later incarcerated in Texas, where District had opportunity to raise those issues before trial court, but failed to do so. *Al Malik v. District of Columbia*, 703 A.2d 1250, 1998 D.C. App. LEXIS 4 (1998).

Venue.

Remand for reconsideration of trial court's order dismissing on *forum non conveniens* grounds a lawsuit brought by inmates, who were originally incarcerated in District and later incarcerated in Texas county pursuant to

contract between District and county, was warranted when trial court did not directly apply convincing circumstances standard for forum non conveniens dismissal, and apparently over-

looked fact that District was main defendant while Texas county was third party defendant. *Al Malik v. District of Columbia*, 703 A.2d 1250, 1998 D.C. App. LEXIS 4 (1998).

§ 24-1002. Additional duties of Mayor.

The Mayor shall do all things necessary and incidental to the execution of the compact.

(May 10, 1989, D.C. Law 7-230, § 3, 35 DCR 7736; May 8, 1990, D.C. Law 8-122, § 3, 37 DCR 30.)

Prior Codifications. — 1981 Ed., § 24-1002.

Legislative history of Law 7-230. — For legislative history of D.C. Law 7-230, see Historical and Statutory Notes following § 24-1001.

Legislative history of Law 8-122. — For legislative history of D.C. Law 8-122, see Historical and Statutory Notes following § 24-1001.

CHAPTER 11. INTERSTATE COMPACT ON JUVENILES.

Sec.

24-1101. Congressional findings and purposes.

24-1102. Authority to enter into and execute Compact.

24-1103. Appointment of Compact Administrator; administration of Compact and supplementary agreements.

Sec.

24-1104. Enforcement of Compact.

24-1105. Construction of Compact.

24-1106. Right to alter, amend, or repeal provisions.

§ 24-1101. Congressional findings and purposes.

(a) The Congress finds that:

(1) Juveniles who are not under proper supervision and control, or who have absconded, escaped, or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others; and

(2) The cooperation of the District of Columbia with the states is necessary to provide for the welfare and protection of juveniles and other persons in the District of Columbia.

(b) The Congress intends, in authorizing the District of Columbia to adopt the Interstate Compact on Juveniles, to have the District of Columbia cooperate fully with the states:

(1) In returning juveniles to those states requesting their returns; and

(2) In accepting and providing for the return of juveniles who are residents of the District of Columbia and who are found or apprehended in a state.

(July 29, 1970, 84 Stat. 657, Pub. L. 91-358, title IV, § 401.)

Prior Codifications. — 1981 Ed., § 32-1101. 1973 Ed., § 32-1101.

CASE NOTES

ANALYSIS

In general.

Ratification as signatory.

In general.

Requisition papers filed by Alabama authorities, together with testimony of police officer from Alabama amply established probable cause to detain juvenile in District of Columbia and order his rendition pursuant to Interstate Compact on Juveniles. D.C. Code 1981, §§ 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

Ratification as signatory.

Juvenile failed to establish that District of Columbia was not signatory to Interstate Compact on Juveniles, as would bar juvenile's rendition to Alabama under compact; District may-

or's published order designating interstate juvenile compact officer was presumptive proof that District was signatory to compact, and juvenile failed to rebut that presumption. D.C. Code 1981, §§ 1-227(e), 1-1531 to 1-1538, 1-1541, 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

That documents ratifying Interstate Compact on Juveniles were not published pursuant to Documents Act did not render compact ineffective, inasmuch as compact became law once ratification papers were executed and that historical fact could not be altered by Documents Act, which was enacted years after compact's ratification. D.C. Code 1981, §§ 1-1531 to 1-1538, 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

§ 24-1102. Authority to enter into and execute Compact.

The Mayor is authorized to enter into and execute on behalf of the District a compact with any state or states legally joining therein in the form substantially as follows:

THE INTERSTATE COMPACT FOR JUVENILES

Article I.

Purpose.

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to:

(1) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) Ensure that the public-safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) Return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(4) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) Provide for the effective tracking and supervision of juveniles;

(6) Equitably allocate the costs, benefits, and obligations of the compacting states;

(7) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;

(8) Insure that immediate notice is provided to jurisdictions where defined offenders are authorized to travel or relocate across state lines;

(9) Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(10) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials and regular reporting of compact activities to heads of state executive, judicial, and legislative branches, and juvenile and criminal justice administrators;

(11) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in this activity; and

(13) Coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the Interstate Commission, created in Article III of this compact, are the formation of public policies and, therefore, are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Article II.

Definitions.

As used in this compact, unless the context clearly requires a different construction, the term:

(1) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

(2) "Compact administrator" means the individual in each compacting state, appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the State Council under this compact.

(3) "Compacting state" means any state that has enacted enabling legislation for this compact.

(4) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles, subject to the

terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the State Council under this compact.

(7) "Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including a(n):

(A) "Accused delinquent" — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(B) "Adjudicated delinquent" — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(C) "Accused status offender" — a person charged with an offense that would not be a criminal offense if committed by an adult;

(D) "Adjudicated status offender" — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(E) "Non-offender" — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(9) "Non-compacting state" means any state that has not enacted enabling legislation for this compact.

(10) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(11) "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of this compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article III.

Interstate Commission for Juveniles.

(a) The compacting states hereby create the Interstate Commission for Juveniles. The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth in this compact and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state, in consultation with the State Council for Interstate Juvenile Supervision ("State Council"). The commissioner shall be the compact administrator, deputy compact administrator, or

designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations. Such non-commissioner members shall include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio, non-voting members. The Interstate Commission may provide in its bylaws for such additional ex-officio, non-voting members, including members of other national organizations, in such numbers as shall be determined by the Interstate Commission.

(d) Each compacting state represented at any meeting of the Interstate Commission shall be entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(e) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(f) The Interstate Commission shall establish an executive committee, which shall include Interstate Commission officers, members, and others, as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amending the compact. The executive committee, managed by an executive director and the Interstate Commission staff, shall;

(1) Oversee the day-to-day activities of the administration of the compact;

(2) Administer enforcement and compliance with the provisions of the compact, its bylaws, and rules; and

(3) Perform other duties as directed by the Interstate Commission or as set forth in the bylaws.

(g) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the State Council, shall appoint another authorized representative in the absence of the commissioner from that state to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(h) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The

Interstate Commission may exempt from disclosure any information or official record to the extent it would adversely affect personal-privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission, and any of its committees, may close a meeting to the public when it determines by a two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information that is privileged or confidential;

(4) Involve accusing a person of a crime;

(5) Involve formally censuring a person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigative records compiled for law-enforcement purposes;

(8) Disclose information contained in or related to an examination or operating report or a condition report prepared by, on behalf of, or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

(9) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(10) Specifically relate to the Interstate Commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to subsection (i) of this article, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each provision that supports the certified opinion. The Interstate Commission shall keep minutes, which shall fully and clearly describe all matters discussed in any meeting, and shall provide a full and accurate summary of any actions taken, and the reasons for the actions, including a description of each of the views expressed on any item and the record of any roll-call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

(k) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. The methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

Article IV.

Powers and duties of the Interstate Commission.

The Interstate Commission shall have the power and duty to:

- (1) Provide for dispute resolution among the compacting states;
- (2) Promulgate rules to effect the purposes and obligations enumerated in the compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
- (3) Oversee, supervise, and coordinate the interstate movement of juveniles, subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission;
- (4) Enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of the judicial process;
- (5) Establish and maintain offices, which shall be located within one or more of the compacting states;
- (6) Purchase and maintain insurance and bonds;
- (7) Borrow, accept, hire, or contract for services of personnel;
- (8) Establish and appoint committees and hire staff that it considers necessary to carry out its functions, including, but not limited to, an executive committee as required by Article III(f), which shall have the power to act on behalf of the Interstate Commission in carrying out the powers and duties set forth in this article;
- (9) Elect or appoint officers, attorneys, employees, agents, and consultants, determine their qualifications, fix their compensation, and define their duties;
- (10) Establish personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;
- (11) Accept and utilize and dispose of donations and grants of money, equipment, supplies, materials, and services;
- (12) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (13) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (14) Establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;
- (15) Sue and be sued;
- (16) Adopt a seal and bylaws to govern its management and operation;
- (17) Report annually to the legislatures, governors, judiciary, and State Councils of the compacting states concerning its activities during the preceding year and any recommendations that it adopted;
- (18) Coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in this activity;
- (19) Establish uniform standards for the reporting, collecting, and exchanging of data;
- (20) Maintain its corporate books and records in accordance with the bylaws; and
- (21) Perform any other functions as may be necessary or appropriate to achieve the purposes of this compact.

Article V.

Organization and operation of the Interstate Commission.

(a) Bylaws — The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

- (1) Establishing the fiscal year of the Interstate Commission;
- (2) Establishing an executive committee and any other committees as may be necessary;
- (3) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each meeting;
- (5) Establishing the titles and responsibilities of the officers of the Interstate Commission;
- (6) Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;
- (7) Providing start-up rules for the initial administration of the compact; and
- (8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and staff — (1) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have the authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. These officers shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, these officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for the period, term, conditions, and compensation as the Interstate Commission considers appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member. The executive director shall hire and supervise such other staff as may be authorized by the Interstate Commission.

(c) Qualified immunity, defense, and indemnification — (1) The Interstate Commission's executive director and employees shall be immune from suit and liability, personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out

of or relating to any actual or alleged act, error, or omission that occurred, or that the person had a reasonable basis for believing occurred, within the scope of his or her Interstate Commission employment, duties, or responsibilities; provided, that no such person shall be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of the person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of the person's Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of his or her Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against the person arising out of any actual or alleged act, error, or omission that occurred within the scope of his or her Interstate Commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of his or her Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

Article VI.

Rulemaking functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate and publish rules to effectively and efficiently achieve the purposes of the compact.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant to this article. The rulemaking shall substantially conform to the principles of the Model State Administrative Procedures Act (1981 Act) (Uniform Laws Annotated, Vol. 15, p.1 (2000)), or

such other administrative procedures act that the Interstate Commission considers appropriate, consistent with the due process requirements of the U.S. Constitution, as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.

(c) When promulgating a rule, the Interstate Commission shall, at a minimum:

(1) Publish the proposed rule's entire text stating the reason for the proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which shall be added to the record and be made publicly available;

(3) Provide an opportunity for an informal hearing if petitioned by 10 or more persons; and

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state and local officials or other interested parties.

(d)(1) The Interstate Commission shall allow, not later than 60 days after a rule is promulgated, any interested person to file a petition for judicial review of the rule in the United States District Court for the District of Columbia or in the federal district court where the Interstate Commission's principal office is located. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(2) For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(e) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or adoption of a resolution, using the same manner used to adopt the compact, cause that the rule shall have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this act shall be null and void 12 months after the first meeting of the Interstate Commission.

(g) Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule, which shall become effective immediately upon adoption; provided, that the usual rulemaking procedures provided in this article shall be retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

Article VII.

Oversight, enforcement, and dispute resolution.

(a) Oversight — (1) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being

administered in non-compacting states that may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated pursuant to this compact shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. The Interstate Commission shall be entitled to receive all service of process in any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the Interstate Commission and have standing to intervene in the proceeding for all purposes.

(b) Dispute resolution — (1) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as on issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any dispute or other issue that is subject to the compact that may arise among compacting states or between compacting and non-compacting states. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI.

Article VIII.

Finance.

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and the cost of its staff that shall be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment shall be allocated based upon a formula to be determined by the Interstate Commission, which shall take into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The Interstate Commission shall promulgate a rule, which shall be binding on all compacting states, that governs the assessment.

(c) The Interstate Commission shall not incur any obligation of any kind prior to securing the funds adequate to meet the obligation or pledge the credit of any compacting state except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep an accurate account of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant. The report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article IX.

The State Council.

“Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own State Council, its membership must include at least one representative from the legislative, judicial, and executive branches of government and a victims’ group, and include the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each State Council will advise and may exercise oversight and advocacy concerning that state’s participation in Interstate Commission activities and duties as determined by that state, including, but not limited to, development of a policy concerning operations and procedures of the compact within that state.

Article X.

Compacting states, effective date, and amendment.

(a) Any state as defined in Article II(12) is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 states. The initial effective date shall be the later of July 1, 2004, or enactment into law by the 35th state. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states, or their designees, shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

(c) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.

Article XI.

Withdrawal, default, termination, and judicial enforcement.

(a) Withdrawal — (1) Once effective, the compact shall continue in force and remain binding upon each compacting state; provided, that a compacting

state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt of the notice.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Technical assistance, fines, suspension, termination, and default — (1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or rules, the Interstate Commission may impose any or all of the following penalties:

(A) Remedial training and technical assistance as directed by the Interstate Commission;

(B) Alternative dispute resolution;

(C) Fines, fees, and costs in amounts considered reasonable and fixed by the Interstate Commission; and

(D) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws or rules have been exhausted and the Interstate Commission has determined that the offending state is in default.

(2) Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the State Council.

(3) The grounds for default include, but are not limited to, failure of a compacting state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws, or rules, and any other grounds designated in the Interstate Commission's bylaws and rules.

(4) The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default, pending a cure of the default. The Interstate Commission shall specify the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated upon the effective date of termination.

(5) Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor, the Chief Justice or

Chief Judicial Officer, the majority and minority leaders of the defaulting state's legislature, and the State Council of the termination.

(6) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination.

(7) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise agreed upon in writing between the Interstate Commission and the defaulting state.

(8) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial enforcement — The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices to enforce compliance with the provisions of the compact, its rules, or bylaws against any compacting state in default. If judicial enforcement is necessary, the prevailing party shall be awarded all the costs of litigation, including reasonable attorney fees.

(d) Dissolution of the compact — (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

Article XII.

Severability and construction.

(a) The provisions of this compact shall be severable. If any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XIII.

Binding effect of compact and other laws.

(a) Other Laws — (1) Nothing in this compact shall prevent the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

(b) Binding effect of the compact — (1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over the meaning or interpretation of an Interstate Commission action and a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding the meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligation, duty, power, or jurisdiction sought to be conferred by the provision upon the Interstate Commission shall be ineffective and the obligation, duty, power, or jurisdiction shall remain in the compacting state and shall be exercised by the agency of the compacting state to which the obligation, duty, power, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

(July 29, 1970, 84 Stat. 658, Pub. L. 91-358, title IV, § 402; Apr. 20, 1999, D.C. Law 12-264, § 35, 46 DCR 2118; Jan. 19, 2012, D.C. Law 19-81, § 2, 58 DCR 8911.)

Prior Codifications. — 1981 Ed., § 32-1102.

1973 Ed., § 32-1102.

Effect of amendments. — D.C. Law 19-81 rewrote the section.

Temporary Amendment of Section. — Section 2 of D.C. Law 18-362 rewrote the section.

Section 4(b) of D.C. Law 18-362 provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Interstate Compact for Juveniles Emergency Amendment Act of 2010 (D.C. Act 18-695, January 19, 2011, 58 DCR 700).

For temporary (90 day) amendment of section, see § 2 of Interstate Compact for Juveniles Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-49, April 27, 2011, 58 DCR 3859).

For temporary (90 day) amendment of section, see § 2 of Interstate Compact for Juveniles Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-294, January 20, 2012, 59 DCR 474).

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10,

1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 19-81. — Law 19-81, the “Interstate Compact for Juveniles Amendment Act of 2011,” was introduced in Council and assigned Bill No. 19-13, which was referred to the Committees on Human Services and the Judiciary. The Bill was adopted on first and second readings on July 12, 2011, and September 20, 2011, respectively. Signed by the Mayor on October 11, 2011, it was assigned Act No. 19-171 and transmitted to both Houses of Congress for its review. D.C. Law 19-81 became effective on January 19, 2012.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Death penalty in requesting jurisdiction.

Examination, determination, and review of proceedings.

In general.

Ratification as signatory.

Requisition and accompanying documents.

Withdrawal from compact.

Death penalty in requesting jurisdiction.

That District of Columbia repealed death penalty did not bar juvenile's rendition to Alabama under Interstate Compact on Juveniles, despite fact that Alabama had death penalty and refused to state that it would not seek death penalty against juvenile; compact required rendition of juvenile regardless of possible punishment to which juvenile may be subjected under laws of demanding state. D.C. Code 1981, § 32-1102(a), Arts. V, XVII. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

Examination, determination, and review of proceedings.

District's consent to rendition of juvenile to another state under Interstate Compact on Juveniles could not properly be exercised by assistant corporation counsel absent express delegation of such power, nor by trial judge; instead, remand was required to enable trial court to identify "compact administrator" under Compact and to solicit his grant or denial of district's consent to rendition. Code Md.1957, art. 26, § 70-19; art. 41, § 387 et seq.; Interstate Compact on Juveniles, art. V, D.C. Code following § 32-1102; D.C. Code §§ 23-704, 32-1103. In re G.C.S., 360 A.2d 498, 1976 D.C. App. LEXIS 328 (1976).

Where Maryland filed petition for requisition of juvenile under Interstate Compact on Juveniles, Superior Court in District of Columbia did not err in refusing to determine whether rendition of juvenile to Maryland would be in his "best interests." Code Md.1957, art. 27, § 30; art. 41, § 387 et seq.; Interstate Compact on Juveniles, arts. V, XVII, D.C. Code following § 32-1102; U.S. Const. art. 1, § 10, cl. 1 et seq.; 4 U.S.C. § 112; D.C. Code SCR, Juvenile Rules 2, 7(c), 48(b). In re G.C.S., 360 A.2d 498, 1976 D.C. App. LEXIS 328 (1976).

Right of consent to rendition of juvenile to another jurisdiction under Interstate Compact on Juveniles is not that of a fugitive juvenile but that of district, and is unqualified under Compact. Interstate Compact on Juveniles, arts. V, XVII, D.C. Code following § 32-1102. In

re G.C.S., 360 A.2d 498, 1976 D.C. App. LEXIS 328 (1976).

In general.

By its terms the Juvenile Compact does not require a probable cause determination for extradition. In re O.M., 117 WLR 1253 (Super. Ct. 1989).

Asylum state does not have discretion to deny a demanding state's proper request for extradition on the grounds that the asylum state is morally opposed to the death penalty which may be imposed upon the defendant by the demanding state, or the asylum state believes that the defendant will not receive a fair trial in the demanding state. In re O.M., 117 WLR 1253 (Super. Ct. 1989).

Ratification as signatory.

Juvenile failed to establish that District of Columbia was not signatory to Interstate Compact on Juveniles, as would bar juvenile's rendition to Alabama under compact; District mayor's published order designating interstate juvenile compact officer was presumptive proof that District was signatory to compact, and juvenile failed to rebut that presumption. D.C. Code 1981, §§ 1-227(e), 1-1531 to 1-1538, 1-1541, 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

That documents ratifying Interstate Compact on Juveniles were not published pursuant to Documents Act did not render compact ineffective, inasmuch as compact became law once ratification papers were executed and that historical fact could not be altered by Documents Act, which was enacted years after compact's ratification. D.C. Code 1981, §§ 1-1531 to 1-1538, 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

Requisition and accompanying documents.

Requisition papers filed by Alabama authorities, together with testimony of police officer from Alabama amply established probable cause to detain juvenile in District of Columbia and order his rendition pursuant to Interstate Compact on Juveniles. D.C. Code 1981, §§ 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

Withdrawal from compact.

Language in Interstate Compact on Juve-

niles was mandatory and, thus, only way for District of Columbia to withdraw from compact was to follow procedures set forth in compact itself. D.C. Code 1981, §§ 32-1101 to 32-1106, 32-1102(a), Art. XIV. In re O.M., 565 A.2d 573,

1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

§ 24-1103. Appointment of Compact Administrator; administration of Compact and supplementary agreements.

(a) The Mayor shall appoint or designate an officer of the government of the District of Columbia (hereinafter in this section referred to as the "Compact Administrator") to administer the Compact. The Compact Administrator shall serve at the pleasure of the Mayor.

(b) The Compact Administrator, acting jointly with like officers of party states, shall promulgate rules and regulations to carry out more effectively the terms of the Compact. The Compact Administrator shall cooperate with all departments, agencies, and officers of the government of the District of Columbia in facilitating the proper administration of the Compact or of any supplementary agreement entered into by the Compact Administrator under subsection (c) of this section.

(c) Subject to the approval of the Mayor, the Compact Administrator may enter into supplementary agreements with appropriate state officials for the purpose of administering the Compact.

(d) Subject to the approval of the Mayor, the Compact Administrator may make or arrange for any payments necessary to discharge any financial obligations imposed upon the District of Columbia by the Compact or by any supplementary agreement entered into under subsection (c) of this section.

(July 29, 1970, 84 Stat. 665, Pub. L. 91-358, title IV, § 403.)

Cross references. — Superior court family division, exclusive jurisdiction, see § 11-1101.

Prior Codifications. — 1981 Ed., § 32-1103.

1973 Ed., § 32-1103.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

District's consent to rendition of juvenile to another state under Interstate Compact on Juveniles could not properly be exercised by assistant corporation counsel absent express delegation of such power, nor by trial judge; instead, remand was required to enable trial court to identify "compact administrator" under

Compact and to solicit his grant or denial of district's consent to rendition. Code Md.1957, art. 26, § 70-19; art. 41, § 387 et seq.; Interstate Compact on Juveniles, art. V, D.C. Code following § 32-1102; D.C. Code §§ 23-704, 32-1103. In re G.C.S., 360 A.2d 498, 1976 D.C. App. LEXIS 328 (1976).

§ 24-1104. Enforcement of Compact.

The courts, departments, agencies, and officers of the District of Columbia shall enforce the Compact and shall take such action as may be necessary to carry out the purposes and intent of the Compact which may be within their respective jurisdictions.

(July 29, 1970, 84 Stat. 666, Pub. L. 91-358, title IV, § 402.)

Prior Codifications. — 1981 Ed., § 32-1104. 1973 Ed., § 32-1104.

CASE NOTES

Withdrawal from compact.

Language in Interstate Compact on Juveniles was mandatory and, thus, only way for District of Columbia to withdraw from compact

was to follow procedures set forth in compact itself. D.C. Code 1981, §§ 32-1101 to 32-1106, 32-1102(a), Art. XIV. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989).

§ 24-1105. Construction of Compact.

The Compact shall not be construed to prohibit the adoption of any other plan or procedure for the District of Columbia for the return of any runaway juvenile.

(July 29, 1970, 84 Stat. 666, Pub. L. 91-358, title IV, § 405.)

Prior Codifications. — 1981 Ed., § 32-1105. 1973 Ed., § 32-1105.

§ 24-1106. Right to alter, amend, or repeal provisions.

The right to alter, amend, or repeal this chapter is expressly reserved by the Congress.

(July 29, 1970, 84 Stat. 666, Pub. L. 91-358, title IV, § 406.)

Prior Codifications. — 1981 Ed., § 32-1106. 1973 Ed., § 32-1106.

CHAPTER 12. JUDICIARY SQUARE DETENTION FACILITY CONSTRUCTION.

Sec.

24-1201. Definitions.

24-1202. Judiciary Square detention facility requirements.

Sec.

24-1203. Responsibilities of the Mayor.

§ 24-1201. Definitions.

For the purposes of this chapter, the term:

(1) "Council" means the Council of the District of Columbia.

(2) "Judiciary Square" means the area generally bounded by H Street, N.W. to the north, 6th Street, N.W. to the west, Pennsylvania Avenue, N.W. and Constitution Avenue, N.W. to the south, and 1st Street, N.W. and 3rd Street, N.W. to the east.

(3) "Mayor" means the Mayor of the District of Columbia.

(May 4, 1990, D.C. Law 8-117, § 2, 37 DCR 1733.)

Prior Codifications. — 1981 Ed., § 32-1701.

Legislative history of Law 8-117. — Law 8-117, "Judiciary Square Detention Facility Construction Act of 1990," was introduced in Council and assigned Bill No. 8-405, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Approved without the signature of the Mayor on March 6, 1990, it was assigned Act No. 8-171 and transmitted to both Houses of Congress for its review.

§ 24-1202. Judiciary Square detention facility requirements.

(a) The Mayor shall construct or renovate a building within or near Judiciary Square for use as a detention facility for the District of Columbia ("District") to house not more than 1,500 inmates. The facility shall comply with the American Correctional Association standards for correctional facilities.

(b) The facility shall house primarily pretrial detainees, persons convicted of misdemeanors, and parole violators held pending a parole revocation hearing.

(c) The Mayor shall issue proposed rules to classify inmates in an incoming inmate reception and diagnostic program of the facility according to rehabilitative needs, the crime committed, any drug abuse history, and appropriate housing requirements. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(May 4, 1990, D.C. Law 8-117, § 3, 37 DCR 1733.)

Prior Codifications. — 1981 Ed., § 32-1702.

Legislative history of Law 8-117. — For

legislative history of D.C. Law 8-117, see Historical and Statutory Notes following § 24-1201.

§ 24-1203. Responsibilities of the Mayor.

(a) The Mayor shall submit to the Council a proposal for a detention facility within or near Judiciary Square within 90 days of November 7, 1989.

(b) If the Mayor has not entered into a design construction contract for the detention facility within 180 days of May 4, 1990, the Mayor shall submit a report to the Council that details the progress of the plans for a detention facility and the reason that a contract has not been executed.

(c) The Mayor shall not dispose of any property owned by or under the jurisdiction of the District government within or near Judiciary Square until a site for a detention facility has been selected or acquired, except that an appropriate disposition may be made for the National Law Enforcement Officers Memorial ("Memorial"), which is to be built pursuant to the Joint Resolution Authorizing the Law Enforcement Officers Memorial Fund to establish a memorial in the District of Columbia or its environs, Pub. L. 98-534, 98 Stat. 2712 (1984). The detention facility shall not be located on private property or on the same property or property immediately adjacent to the planned site of the Memorial, which is to be built on the block bounded by F Street, N.W., to the north, E Street, N.W., to the south, 5th Street, N.W., to the west, and 4th Street, N.W., to the east, provided that the construction of the Memorial in no way prevents or delays the construction of the detention facility. Nothing in this subsection shall be construed to limit the District's powers of eminent domain.

(May 4, 1990, D.C. Law 8-117, § 4, 37 DCR 1733.)

Prior Codifications. — 1981 Ed., § 32-1703.

legislative history of D.C. Law 8-117, see Historical and Statutory Notes following § 24-1201.

Legislative history of Law 8-117. — For

CHAPTER 13. EX-OFFENDERS.

Sec.

24-1301. Definitions.

24-1302. Establishment of the Office on Ex-Offender Affairs.

Sec.

24-1303. Establishment of the Commission on Re-Entry and Ex-Offender Affairs.

§ 24-1301. Definitions.

For the purposes of this chapter, the term:

(1) “Commission means the Commission on Re-entry and Ex-Offender Affairs established by § 24-1303(a).

(2) “Director” means the Executive Director of the Office on Ex-Offender Affairs.

(3) “Ex-offenders” means persons who were previously incarcerated.

(4) “Office” means the Office on Ex-Offender Affairs established by § 24-1302(a).

(Mar. 8, 2007, D.C. Law 16-243, § 2, 54 DCR 605.)

Legislative history of Law 16-243. — Law 16-243, the “Office on Ex-Offender Affairs and Commission on Re-entry and Ex-Offender Affairs Establishment Act of 2006”, was introduced in Council and assigned Bill No. 16-910, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28 2006, it was as-

signed Act No. 16-599 and transmitted to both Houses of Congress for its review. D.C. Law 16-243 became effective on March 8, 2007.

Editor’s notes. — Section 5 of D.C. Law 16-243 provided that this act shall take effect subject to inclusion of its fiscal effect in an approved budget and financial plan.

Section 7083 of D.C. Law 17-219 repealed section 5 of D.C. Law 16-243.

§ 24-1302. Establishment of the Office on Ex-Offender Affairs.

(a) There is established the Office on Ex-Offender Affairs. The Office shall coordinate and monitor service delivery to ex-offenders. The Office shall make recommendations to the Mayor to promote the general welfare, empowerment, and reintegration of ex-offenders in the areas of employment and career development, health care, education, housing, and social services.

(b)(1) The Office shall be headed by an Executive Director, who shall be appointed by the Mayor with the advice and consent of the Council pursuant to § 1-523.01(a). The Director shall be a full-time employee, for whom annual compensation shall be fixed in accordance with subchapter X-A of Chapter 6 of Title 1.

(2) The Director shall:

(A) Serve as principal advisor to the Mayor on matters related to the reintegration of ex-offenders into the general population;

(B) Serve as an advocate for the ex-offenders;

(C) Respond to recommendations and policy statements from the Commission;

(D) Identify areas for service improvement and policy development and

implementation for presentation to the Mayor and the Commission by funding research, hosting symposia, and undertaking other projects;

(E) Coordinate efforts of District government agencies targeted toward ex-offenders;

(F) Accept volunteer services and funding from public and private sources to supplement the budget in carrying out the duties and responsibilities of the Office;

(G) Apply for, receive, and expend any gift or grant to further the purposes of the Office;

(H) File an annual report on the operations of the Office with the Mayor and the Council; and

(I) Meet and coordinate with members of the Criminal Justice Coordinating Council, as set forth in § 22-4233(a), and their designates, to disseminate information and recommendations to and from the voting members of the Commission.

(3) The Office shall have staff as funded by appropriations and federal or private grants.

(Mar. 8, 2007, D.C. Law 16-243, § 3, 54 DCR 605; Jan. 19, 2012, D.C. Law 19-80, § 2(a), 58 DCR 8908.)

Effect of amendments. — D.C. Law 19-80, in subsec. (b)(2), deleted “and” from the end of subpar. (G), substituted “; and” for a period the end of par. (H), and added par. (I).

Legislative history of Law 16-243. — For Law 16-243, see notes following § 24-1301.

Legislative history of Law 19-80. — Law 19-80, the “Returning Citizens and Ex-Offender Services Reform Amendment Act of 2011”, was introduced in Council and assigned Bill No.

19-1, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on July 12, 2011, and September 20, 2011, respectively. Signed by the Mayor on October 11, 2011, it was assigned Act No. 19-170 and transmitted to both Houses of Congress for its review. D.C. Law 19-80 became effective on January 19, 2012.

§ 24-1303. Establishment of the Commission on Re-Entry and Ex-Offender Affairs.

(a) There is established the Commission on Re-entry and Ex-Offender Affairs to advise the Mayor, the Council, and the Director on the process, issues, and consequences of the reintegration of ex-offenders into the general population.

(b)(1) The Commission shall consist of 15 public voting members appointed by the Mayor with the advice and consent of the Council pursuant to § 1-523.01(a). There shall also be 13 ex-officio non-voting members, including the following officials or their designees:

(A) Attorney General;

(B) Director of the Department of Human Services;

(C) Director of the Department of Health;

(D) Director of the Department of Housing and Community Development;

(E) Director of the Department of Consumer and Regulatory Affairs;

(F) Superintendent of Education of the District of Columbia;

(G) President of the University of the District of Columbia;

- (H) Chief of the Metropolitan Police Department;
- (I) Director of the Department of Youth Rehabilitative Services;
- (J) Director of the Department of Employment Services;
- (K) Director of the Office of Human Rights;
- (L) Director of the Department of Mental Health; and

(M) Director of the Addiction Prevention and Recovery Administration, or the administrative head of the agency or the successor agency within the Department of Health responsible for administering substance abuse prevention and treatment services.

(2) Ex-officio members or their designees shall develop and implement policies and programs in their respective agencies that will ensure that the purposes of this chapter are accomplished. Ex-officio members or their designees shall meet with the Director, at a minimum, once per quarter in planning and coordinating policies and programs to assist in the successful reintegration of ex-offenders into the general population.

(3)(A) Voting members shall be appointed with due consideration for significant representation from the ex-offenders community and established District-based public, private, nonprofit, and volunteer community organizations involved with the provision of services for ex-offenders, the incarcerated, and their families.

(B) Voting members of the Commission shall serve terms of 3 years except, that of the initial members, 5 shall be appointed for a term of 3 years, 5 shall be appointed for a term of 2 years, and 5 shall be appointed for a term of one year. Members may be reappointed, but shall not serve more than 3 consecutive full terms. Terms for the initial Commission members shall begin on the date that a majority of the members are sworn in, which date shall become the anniversary date for all subsequent appointments.

(C) If a vacancy occurs on the Commission, the Mayor shall appoint, with the advice and consent of the Council, a successor to fill the unexpired portion of the term in accordance with § 1-523.01(a).

(4) The Mayor shall appoint the Chairperson of the Commission.

(5) All members of the Commission shall serve without compensation. Expenses incurred by the Commission or by its individual members, when authorized by the Chairperson, shall become an obligation to the extent of appropriated District of Columbia and federal funds designated for that purpose.

(6) The Commission shall adopt rules of procedure.

(7) The Commission shall meet monthly. The meetings shall be held in space provided by the District government and shall be open to the public. A quorum to transact business shall consist of a majority, plus one, of the voting members.

(8) At least one of the 15 public voting members of the Commission shall be a member of a group, organization, or service provider that focuses on the needs of female ex-offenders and returning citizens.

(c) The Commission shall:

(1) Serve as an advocate for ex-offenders;

(2) Review and submit to the Mayor, the Council, and the Office an annual report that shall be submitted to the Mayor and the Council within 90 days

after the end of each fiscal year, be the subject of a public hearing before the Council, and include:

(A) A summary of the recommendations of the Commission, including a summary of required monthly meetings pursuant to subsection (b)(7) of this section;

(B) A budget breakdown, with supporting budget documents, detailing the fiscal implications of the Commission's recommendations;

(C) Executive branch policy and legislative priorities of the Commission for the following fiscal year; and

(D) A summary of community outreach efforts undertaken by members of the Commission;

(3) Develop sustainable relationships and coordinate with federal, state and private agencies working with ex-offenders;

(4) Participate in public hearings and promote community dialogue concerning the issues confronting ex-offenders;

(5) Review and comment on proposed legislation and regulations, policies, and programs and make policy recommendations on issues affecting ex-offenders;

(6) Develop policy and provide continuing review of the planning undertaken by the Office; and

(7) Make reasonable requests for information necessary to effectuate the discharge of its responsibilities.

(Mar. 8, 2007, D.C. Law 16-243, § 4, 54 DCR 605; Jan. 19, 2012, D.C. Law 19-80, § 2(b), 58 DCR 8908.)

Effect of amendments. — D.C. Law 19-80, in subsec. (b)(1), substituted "13 ex-officio" for "11 ex-officio" in the lead-in language, deleted "and" at the end of subpar. (J), substituted a semicolon for a period at the end of subpar. (K), and add subpars. (L) and (m); and rewrote subsec. (c)(2), which formerly read:

"(2) Review and submit to the Mayor, the

Council, and the Office an annual report, made available to the public, that includes a comprehensive analysis of the needs of ex-offender;"

Legislative history of Law 16-243. — For Law 16-243, see notes following § 24-1301.

Legislative history of Law 19-80. — For history of Law 19-80, see notes under § 24-1302.

CHAPTER 14. DELIVERY OF HEALTH CARE TO INMATES.

Sec.

24-1401. Delivery of health care to Department of Corrections inmates.

§ 24-1401. Delivery of health care to Department of Corrections inmates.

The Mayor shall contract for delivery of health care for inmates in the custody of the Department of Corrections at the D.C. Jail and Correctional Treatment Facility under a community-oriented healthcare services model. For the purposes of this section, the term “community-oriented healthcare services model” means a delivery system in which one entity is responsible for managing Department of Corrections inmates through the full healthcare continuum, including primary care, specialty care, emergency care, and hospital care, and for connecting inmates with a health center in the community for continued care after the inmates are released from the custody of the Department of Corrections.

(Sept. 24, 2010, D.C. Law 18-223, § 3042, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition of section, see § 3042 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 3041 of D.C. Law 18-223 provided that subtitle E of title III of the act may be cited as the “Delivery of Health Care to Inmates Act of 2010”.



